TRIAL

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OF THE

BASANTPUR RIOT CASE

IN THE

Court of the Sessions Judge of Saran.

1893.

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REASONS FOR COMMITTING THE ACCUSED IN THE BASANTPUR RIOT CASE TO THE COURT OF SESSION FOR TRIAL.

IN THE COURT OF JOINT-MAGISTRATE OF SIWAN.

Empress *versus*	1. Ramnath Sahu.	7. Khedu Koeri.
	2. Parmesar Sing.	8. Dodraj Barhi.
	3. Rajman Sahu.	9. Ganga Dass.
	4. Kuldip Rai.	10. Jawahir Lal.
	5. Hargobind Barhi.	11. Ajodhya Rai.
	6. Mutki Rai.	12. Ramnath Singh.

Charges—Sections 395, 402, 151, 152, 147, Indian Penal Code.

THE brief history of this case as gathered from the evidence now produced is as follows:—

On 26th August a largely-attended meeting of the *Gaurakhshini Sabha* was held at Basantpur tank, at which resolutions were passed that cattle were to be saved from the hand of the slaughterer at any cost, and that it was a matter of great regret that cattle were allowed to be driven through the district by butchers. On 31st August some butchers, while conducting a drove of cattle along the main road from Bettiah to Dinapore, were surrounded near Bala, six miles distant from Basantpur, by a mob of rioters armed with lathies, and headed by three local zamindars, Parmesar Sing, Ramnath Sahu, and Rajman Sahu. The rioters were for looting the cattle, and would undoubtedly have done so, had it not been for the timely arrival of a local indigo-planter, at whose coming the rioters dispersed. The cattle were escorted thence to village Kawaspur, three miles off the line of route, where they were detained in police custody pending enquiry. On 1st September, while grazing in the neighbourhood of this village by the side of a river, a second mob of about 200 villagers assembled from the Hindu village of Busawan on the opposite bank of the river. Prevented from crossing owing to the flood, the lathials contented themselves with threatening to loot the cattle if they got the opportunity. On the 2nd September the cattle were escorted to Basantpur and there detained in a grove 300 yards from the police-station. On the 6th instant the Police Inspector from Chapra, Gayatri Ghoshal, who had been sent up with an armed guard to investigate the cases of the 31st August and 1st September, examined as accused persons Parmesar Sing, Ramnath Sahu, and Rajman Sahu between 3 P.M. and 5 P.M., when he released them on bail. At 5-30 P.M. those three men (now accused Nos. 2, 1, and 3) appeared at the thana with their three bailors and demanded the release of the cattle for a price, stating that it would *be better thus, as the cattle would not be allowed to be escorted away.* The demand or request was refused. The three accused left the thana apparently discontented and saying in threatening manner "acchcha: ham jâta." The police officer foresaw trouble and had the cattle escorted from the grove to within the *thana* enclosure.

Then at 7 P.M., darkness having come on, a large and unruly mob surrounded the walls of the *thana* enclosure, brandishing their lathies and shouting "Pahwari Baba ki jai," "Mahabir ki jai," and threateningly demanding the release of the cattle. For half an hour, it is alleged, the Police Inspector and some of the leading police officers, by the light of two lanterns, parleyed with Parmesar Singh, Ramnath Sahu, and Rajman Sahu, accused, who had returned at the head of the rioters. For half an hour the mob kept up their incessant din, shouting to the police to give up the cattle, or they would kill them and then loot the cattle. Heedless of the Police Inspector's orders to disperse, their offence is the greater when we find that an armed guard of ten constables was

drawn up to protect the entrance to the thana. At length, it is alleged, the ringleaders abovenamed, finding their efforts hopeless, chided the rioters, and urged them to loot the cattle, while they themselves disappeared in the crowd. Then one of the front rank, dashing forward, struck one of the armed guard, Birdha Sing, constable, on the forehead, leaving an ugly scar. The mob pressed forward through the gate, the police fired two rounds of blank ammunition, the mob shouted "loot and kill," and finally the police fired a round of buckshot, and the mob disappeared carrying their wounded. Such is the story of the prosecution.

This story is supported by the evidence of witnesses whom I have no reason to distrust, with the exception perhaps of Khairat Ali (witness No. V), who failed to impress me favourably in the witness-box. Looking through the evidence, it is easy to trace the origin of this serious riot to the meeting or Gaurakhshini Sabha of the 26th August; it is equally easy to see that the subsequent preliminary disturbances of the public peace on the 31st August and 1st September were adding fuel to the flame which burst out on the 6th September. From beginning to end we find that the two leading accused, Ramnath Sahu and Parmesar Sing, men of influence in the neighbourhood, played a prominent part. It was evidently the intention of these men to secure the release of the cattle. By what means? We have it that force or show of force had been unsuccessfully attempted on the 31st August. We have it that at 5-30 P.M. on 6th September these alleged ringleaders attempted to buy over the cattle, cattle which they knew to belong to the Commissariat butchers, cattle which they knew that neither the butchers nor the police had any right to sell. They went away *re infecta*. A reference to the map will show that the persons named in the various depositions as implicated in the riot must have collected from villages as far distant as 16 miles. The riot then was not the effect of a sudden impulse. It is clear that the assembly of lathials on that evening from all points of the compass was organized from beforehand. It is equally clear that the ringleaders were fully conscious of this massing of forces when they left the thana at 6 P.M. having failed to perform successfully their peaceful mission. They came again at the head of a riotous mob and demanded the release of the cattle. "Cattle or your life" is the cry. This time no price is offered, no money is brought. They dared not wait for the Magistrate's order on the morrow. Fair means have failed, foul means will succeed. This is the only way in which it is possible to interpret the demeanour and threats and overt acts of the crowd. Clearly their intention was to put the police officers by their presence in fear of instant injury, and so to dishonestly induce them to deliver up the cattle. In fact, they came to *extort*, and their numbers render the "robbery by extortion" a dacoity. An overt act, viz., the assault on Bidha Singh, police constable, was committed, plainly manifesting the intention of the robbery. The case is therefore one of *dacoity*, or of assembling to commit dacoity, cases under sections 395 and 402 of the Indian Penal Code, triable only by the Court of Sessions.

It only remains for me to commit for trial such persons among the accused against whom there is *primâ facie* evidence to warrant a conviction.

I divide the accused into two groups:—

Against (1) Ram Nath Sahu, (2) Parmesar Singh, and (3) Rajman Sahu, there is a mass of evidence to show that they acted throughout as spokesmen and ringleaders of the mob, till the time that the police officer was assaulted, and then seeing that the police were going to fire they thought fit to retire. It is idle to suppose that they did not intend the consequences of their acts and words on behalf of the mob. I attach considerable importance to the evidence of Dodraj Barhi, who has been made Queen's evidence in the case, and who made his original statement (subsequently corroborated) before me, before the police had had any opportunity of putting pressure on him. In the witness-box it was obvious that he felt himself between two fires—on the one side the dangers of incurring the wrath of such influential men as Parmesar Singh, Ramnath Sahu, and Rajman Sahu, and on the other the danger of going to jail. I have no reason to distrust the evidence of witnesses Nos. 2, 3, 6, 7, 11, and 13, all of whom directly implicate the three accused abovenamed.

Against Hargobind and Kuldip (accused Nos. 4 and 5) we have the evidence of some three police officers, who say that they saw these men, or men like them, while on the other hand some others who should have seen them did not notice them. The two accused were perfect strangers to the witnesses at the time, and under the circumstances I hold the evidence against them to be insufficient, and accordingly discharge them under section 209 of the Criminal Procedure Code.

Mutki Rai, Khedu Koeri, and Dodraj Barhi all bear the marks of shot-wounds and admit their presence in front of the thana. Dodraj Barhi having obtained a free pardon is discharged under section 209, Criminal Procedure Code, and has turned Queen's evidence. The burden of proving their innocence lies on the accused.

Ganga Dass (accused No. 9) is known locally as Pahwari Baba. He appears to have played a prominent part at the Gaurakhshini Sabha on 26th instant, but not to have actually preached.

His name "Pahwari Baba ki jai" was used as a war cry by the assembled rioters on the night of the 6th.

The direct evidence offered does not sufficiently implicate him with the riot of the 6th September. I accordingly discharge him under section 209, Criminal Procedure Code.

Jawahir Lal (accused No. 10) is alleged by four respectable educated witnesses—Ram Autar Lal, Bindesri Prosad, Parmanand Sahu, Khub Narain (witness XIX)—to have been identified by them in a crowd of lathials who ran past their house to the thana that night just as the turmoil began shouting "Chalo, barho; ab kya dekhat baro; gai chino." The intention of these rioters is clear from what they shouted. The witnesses had a light with them and well knew the accused as the village patwari. Enmity is suggested, but local enquiry does not bear it out.

The evidence is sufficient to warrant a committal.

Accused (11) and (12), Ajodhya Rai and Ramnath Singh, were seen by four witnesses, who gave their evidence in a satisfactory manner, proceeding on the morning of 6th September with a band of lathials, fifteen in number, in the direction of Basantpur, where they said they had some business. At 4 P.M. a crowd of men—lathials said to belong to Ramnath Singh—were seen by Jamad Alli about 300 yards from the thana sitting by the road.

Ajodhya Rai now bears a suspicious looking injury on the cheek, from which Enayet Hajam (witness No. XXI) says he extracted a shot in the capacity of family doctor, and which the Assistant Surgeon describes as probably a shot-wound. The head-constable, Akbar Alli, speaks to having arrested him under suspicious circumstances. I therefore commit accused Ajodhya Rai for trial before the Court of Sessions, while Ramnath Singh, who is only traced up to within 300 yards of the thana, and who is last seen at 4 P.M., I discharge under section 209 of the Criminal Procedure Code.

For the reasons already given I commit the following accused—

(1) Ramnath Sahu,	(4) Khedu Koeri,
(2) Parmesar Singh,	(5) Mutki Rai,
(3) Rajmau Sahu,	(6) Jawahir Rai,

(7) Ajodhya Rai,

for trial before the Court of Sessions on the following charges:—

Firstly, that on or about the 6th September at Basantpur they committed dacoity, an offence under section 395 of the Indian Penal Code.

Secondly, that on the said date and place they assembled for the purpose of committing daicoty.

Thirdly, that on the said date and place, being members of an unlawful assembly, the common object of which was to overawe the police officers at Basantpur station in the exercise of their lawful power as public servants, committed the offence of rioting under section 147 of the Indian Penal Code.

Fourthly, that on the said date and place one of the members, by name Mutki, of the said unlawful assembly, in prosecution of the said common object, voluntarily caused hurt to Birdha Singh, police constable, in the discharge of his duty as public servant endeavouring to disperse an unlawful assembly,

and therefore that they are all, under section 149, Indian Penal Code, guilty of an offence under section 152 of the Indian Penal Code, viz., assaulting a public servant when suppressing a riot.

Fifthly, that on the said date and place they knowingly continued in an assembly of five persons and more after being commanded to disperse.

J. LANG,

Joint-Magistrate, Siwan.

The 25th September 1893.

TRIAL OF THE BASANTPUR COW RIOT CASE.

IN THE COURT OF THE SESSIONS JUDGE OF SARAN.

EMPRESS *versus* PARMESWAR SING AND SIX OTHERS.

Re-printed from the Englishman *Newspaper.*

The 28th November 1893.

THIS case, which at the time of its occurrence, in the early part of September last, was reported in these columns, and which is causing considerable excitement in the Chupra and adjoining districts, was taken up this day (28th November) by Mr. H. W. Gordon, C.S., District and Sessions Judge of Saran. The court-house was packed, the majority of those present being Hindus of the better class, who watched the proceedings with the utmost interest, and who were most orderly throughout the hearing.

Mr. Sutherland, Barrister-at-Law, instructed by Maulvi Abdus Samad, B.L., Government Prosecutor, appeared for the Crown, and Messrs. Garth and Ghose, Barristers-at-Law, instructed by Babu Bhoobanessary Sahai, appeared for the defence. The case was watched on behalf of Government by Mr. H. LeMesurier, C.S., Special Commissioner, deputed to investigate cow riot cases in the Behar districts, who sat in the body of the court.

Babu Bhugwan Pershad, muktiar, and Mahomed Islam, landholder, were selected from amongst the assessors summoned as they said they knew English, though imperfectly.

Mr. Sutherland, in opening the case for the prosecution, which he did at considerable length, said:—

I shall endeavour to open my case on behalf of the Crown to you in the simplest language I can command in order that you should be able to follow me. The accused before you, seven in number are mainly charged with these three offences: (1) for having committed dacoity, (2) for having assembled for the purpose of committing dacoity, and (3) rioting. There are also two other charges with which I need not trouble you just now, and to which I shall not refer unless I consider it necessary to explain them. The meaning of these charges I will explain to you in ordinary English, as they are couched in technical phrase. I shall refer to the sections of the code in such language as will place you in a position to judge of the offences committed after I have opened the facts of the case to you.

The offences are alleged to have taken place on the evening of the 6th of September this year at the Basantpur thana. Having regard to the particular case which the prosecution will have to lay before you, I deem it necessary to make some general remarks. With respect to the offence of dacoity and rioting, I shall also have to make some special remarks. The offence of dacoity is one which, though not of such frequent occurrence as rioting, is an offence which we all know periodically and constantly occurs in all districts, and includes the offence of gathering for the purpose of committing a dacoity. In a large majority of these cases the persons charged with the commission of these offences are of low caste, and men who have little or no means of earning their livelihood—*budmashes*, using the word in its most extensive sense. Now, with regard to the dacoity in this case, you will find that, out of the seven persons on their trial, none of them belong to the classes who generally commit these offences. Three out of the seven accused are well-to-do zamindars, who in the village in which they live and in the other villages in which they own property are men who exercise a great deal of influence. With regard to the remaining four accused, one is a Burhi, one is a Putwari and the other two are raiyats of a certain village not very far from Basantpur.

The case for the prosecution is that the men who are alleged to have committed dacoity, and assembled for the purpose of committing dacoity and rioting did not do so with the sole and exclusive motive of gaining property to which they were not entitled. With regard to the offence of rioting, you will find in your experience, which no doubt tallies with that of most of us, that in a very large number of such cases, rioting is committed in connection with land or something belonging to land, for rioting is either resorted to for taking forcible possession

or forcibly dispossessing. It is also committed with respect to the various methods of irrigation. There is another class of rioting for rescuing cattle taken to be impounded under the Cattle Trespass Act. Now in this particular case, none of the subjects are put forward to you which form the large majority of cases for rioting. You will find here, from the charges drawn up against these accused with respect to rioting, that their common object was to take forcible possession of 129 head of cattle, more or less, which were then in the custody of the Police in the Basantpur thana. Now, in the prosecution of this common object, it is alleged that force was used, and it is with reference to the very same cattle that it is alleged the offence of dacoity or assembling for the purpose of committing dacoity was committed, so that in the present case there is not the same stereotyped motive, but the sole and exclusive motive was based on the religious sentiment with which the Hindus regard kine, and which, according to the case for the prosecution, actuates at least a large proportion of Hindus to rescue cattle intended for slaughter by force, if necessary.

Mr. Garth.—I object to the statement made by learned Counsel that a large proportion of the Hindu community are in favour of taking possession of cattle intended for slaughter by force. Does he intend to produce evidence on this point? If this is a statement merely of Mr. Sutherland's *ex cathedra*, I strongly object to it.

The Judge.—Keep within the four corners of the case as far as possible.

Mr. Sutherland.—I am entitled to put my case in this way. The prosecution are quite right and justified in putting to the court and to the assessors any hypothesis or theory to account for the commission of the offence.

Mr. Garth.—Mr. Sutherland stated it as a fact. It is not a fact, and it is not fair to my clients to put it so.

Mr. Sutherland.—I regret that Counsel for the defence has chosen to interrupt me. My friend objects to my saying that a large proportion of the Hindu community are opposed on religious grounds to the slaughter of the kine.

Mr. Garth.—My interruption was in this way. What Mr. Sutherland said was that most of the Hindus were in favour of taking forcible possession of cows intended for slaughter, and I said that this was not a statement of fact.

Mr. Sutherland.—I shall show you presently that we have evidence, whether you believe it or not, that certainly a large proportion of the Hindu community at Basantpur, where the occurrence took place, were not only opposed to the possession of cattle by persons intending to use them for the purpose of slaughter, but that they combined together to rescue such cattle under such circumstances by force, and made this an object of their creed. I am entitled to put that in this way, and I am also entitled to ask you to fall back on contemporary history, which shows as a matter of fact that in all parts of this country, similar riots have taken place lately, attended with loss of life or limb as in the North-West Provinces, Azimgarh, Ballia, and other places.

Mr. Garth.—Are we going to try the Azimgarh case over again? I submit all this is irrelevant, and is being used to prejudice the assessors.

The Judge.—I don't think you should go into those matters.

Mr. Sutherland.—I submit I am perfectly entitled as a pure matter of theory to rely on these matters, which are now history, as accounting for the riot in question. But going more directly to the point, the case for the prosecution is, to put it shortly, that the riot and whatever offences were committed at Basantpur on the evening of the 6th of September last, were committed as the direct outcome of the teachings and preachings of certain Hindus in the Gorakshini Sabhas, where, amongst other things, it was stated and resolved that the forcible seizure of kine intended for slaughter was more or less obligatory on the Hindu soul. This is a statement of fact, and I am entitled to make use of it because I will produce evidence on the point. You will see from the case I have foreshadowed that there are two elements which take it out of the ordinary run of cases of rioting which generally come before the courts. One is that the motive is based on that spirit of intolerance with which the Hindu looks on the slaughter of kine. Whatever may have been the original object of the Gorakshini Sabha, there can be no doubt that in this case, and there will be evidence on the point, that the Gorakshini Sabha held a meeting at Basantpur, where among many other subjects advocated was the forcible rescue of cattle, if they had reason to believe that they were going to be used for any purpose other than of agriculture. The second element is the unjustifiable,

illegal and indefensible interference with the rights and property of other people, that is to say, the Hindus deny the right of any person to slaughter cows. In this case, the offence is committed in view to carrying out the intolerance I have mentioned. You will see that the case you are trying is one of grave importance, because if men commit these offences with the motive, the prosecution allege, then you have one portion of the community claiming the rights of carrying on civil warfare—because it falls very little short of that,—against another portion of the community.

The main facts of the case are as follows:—On the 26th of May last, at least at the end of May, a man employed in the Commissariat Department at Dinapur had despatched certain butchers, among whom were one Nathuni and Jhanju, to purchase cattle at Motihari for the purpose of supplying the troops at Dinapur with food; and a large sum of money was given to the butchers to effect the purchases. At the end of June last, there was a Gorakshini Sabha or meeting held at Maharajganj, in which, amongst other matters which were put forward by way of resolution, was the forcible seizure of cattle in the possession of Muhammadans who intended them for slaughter, and this was declared justifiable. Three witnesses will be called to prove that these meetings were held, and what passed on those occasions. Information of these meetings was given to the head-constable Meher Ali, who treated the matter as a confidential communication, and reported it to Khyrat Ali, the Sub-Inspector of Police, who will also be examined. On the 23rd of August it was proclaimed by beat of drum at Basantpur, where the people of the neighbouring villages had already assembled, that a Gorakshini Sabha would be held there on the 26th of August. Two chaukidars gave information of this fact at the Basantpur thana, and these men will be called, and the entry in the police diary will also be produced. On the 26th of August, in accordance with the previous notice given by beat of drum, a Gorakshini meeting was held at Basantpur, in which a large number of Hindus attended. Among those who attended the meeting were three of the accused—Parmeshwar, Ramnath Sahai and Rajman Sahai. A pundit from Maharajganj preached the dangerous doctrine of taking forcible possession of cattle from Muhammadans who were going to use them for purposes of slaughter. The chaukidars present at the meeting gave information of the views expounded by the pundit at the thana, and there was an entry made in the thana diary to that effect. On the 31st of August, whilst the butchers were returning with the cattle which they had purchased at Mothihari, and when they had got on the Salempur Ghát Road, a number of men there turned out and surrounded them, demanding the release of the cattle, and it was stated by the men in the mob that the release of the cattle was demanded by these three prisoners before you. This took place not very far from a factory called Bála, at four or five in the afternoon, and on the Manager receiving information and coming out, the unlawful assembly dispersed. The cattle were then taken off to Saidpura, which is not far from Bála, and from there to Khowaspur. The butchers, Nathuni and Jhanju, then came to Basantpur and reported at the thana the unwarrantable interference on the part of the Hindu mob with their cattle; and that information was recorded at 10 P.M. But that occurrence has nothing to do with you, so far as the question of the guilt or innocence of these men are concerned on the charges under enquiry by you, which relate to offences committed on the 6th of September; but the occurrences of the 31st of August, near the Bála factory, which I shall for shortness call the Bála occurrence, was made the subject-matter of a trial before the Sub-divisional Officer of Gopalganj. On the 1st September, whilst the cattle were grazing in the neighbourhood of Khowaspur, near the banks of the river, which was in full flood, the villagers on the opposite side made use of threatening language to the butchers. It was a physical impossibility to cross at the time, but their threats were indicative of their desire to seize and take away the cattle. On the 2nd September, the cattle were taken away to Basantpur and kept there on account of the two occurrences at Bala and Basawan. They were kept in a grove about 300 or 400 yards from the thana itself. Then followed a lull in hostilities on the part of the Hindus till the 6th of September at about 7 P.M., when, it is alleged by the prosecution, a large number of people came armed with *lathis* and made an attack on the thana. There was a lull in hostilities till the 6th of

September, but in the interim some very important matters took place, and it is to these matters that I wish to call your undivided attention. Information having reached the authorities at Chupra of the occurrences at Bala and Basawan, the Inspector of Police here, Babu Gyatri Prasanna Ghosal, with an armed guard of policemen for the protection of the cattle, left for Basantpur, and arrived there on the 5th, and on the same day, owing to certain information received, a summons was issued on the three men, Parmeshwar, Ramnath and Rajman, to appear at the thana on the following day, the 6th of September, to furnish security. They were released on bail at 5 P.M. on the 6th when they left the thana, accompanied by their sureties. They returned half an hour afterwards with their sureties, and asked the Inspector to release the cattle on payment of the price of the cattle. To this demand the Inspector could not accede, and he referred them to the District Superintendent and Subdivisional Officer, who were expected the following morning, and to whom they could make their representations, as he could not see his way to make the order they demanded. Parmeshwar then stated that the *sadhus* had eaten nothing for three days, and you will be able to put your own construction upon that expression, having regard to the preceding occurrences and having regard to what was preached at the Sabha at Basantpur on the 26th of August. Then these men and their sureties departed, and the police, in consequence of the demand made, thought it necessary, for the protection of the cattle, to remove them from the grove at Basantpur to the thana itself. At about 7 P.M. an hour after, according to the case for the prosecution, a large and tumultuous assembly armed with *lathis* came to the thana shouting and making every kind of demonstration indicative of their determination to seize and take away the cattle forcibly, and it will be amply proved, if you believe the evidence, that this great mob was headed by Parmeshwar, Ramnath and Rajman, who were the ringleaders. When the armed mob arrived in the vicinity of the thana, and demanded the release of the cattle, they were asked not to create a disturbance but they were not to be quieted, and shouting *Pohwari Baba ke Jay*, *Kali ke Jay*, *Mahabir ke Jay*, rushed at the thana. The police had an armed guard drawn up in front of the thana. The accused Mutki struck a constable named Birda Singh on the forehead with a lathi, and the Inspector seeing that the mob would not listen to remonstrances, and were beyond control, gave the armed guard orders to fire a round of blank cartridge at them. This, instead of inspiring the mob with fear, seemed to have irritated them, and another rush was made at the thana. Seeing that there was no alternative if they wished to preserve their lives and protect the cattle, the Inspector ordered them to fire a round of shot. On the discharge some of the men in the mob were wounded, and they then dispersed. The first information in regard to the occurrence was recorded that evening, and the entry in the diary will be produced. The next morning the District Superintendent of Police and the Subdivisional Officer arrived, and also that very valiant corps—the Bihar Light Horse.

Mr. Garth.—This was after it was all over.

Mr. Sutherland.—Yes, and perhaps it was best that they arrived after it was over, because the Bihar Light Horse would have shown what they were made of, and the casualties would have been much greater.

Mr. Garth.—I am not saying anything against them. I mean that the Sub-Inspector sent for them after it was all over.

Mr. Sutherland.—That may be. I am only speaking of what took place. Some 12 men were under enquiry, with regard to the commission of the offence, before the Subdivisional Officer of Sewan, who committed the seven accused persons, the others being discharged for want of sufficient evidence against them.

Mr. Garth.—I do not think it was quite for want of sufficient evidence against them, but because the evidence was not believed.

Mr. Sutherland.—I do not think it was so.

Mr. Garth.—I think it was so, and the question is whether the Magistrate should have believed this evidence.

Mr. Sutherland.—I do think you are mistaken. At all events, this was the result of the case before the Magistrate.

Counsel then proceeded to give a synopsis of the evidence he intended to place before the assessors and the court, and the points on which he particularly

relied, and then went on to deal with the points of law involved in the case which he explained very lucidly to the assessors. At the close of his address he called evidence in support of his case. The first witness called was Ram Sahai Lall, examined by Mr. Sutherland, he said: I made this map, which I copied from the zilla map on a scale of one mile to an inch. The district zilla map is on the same scale. The flag marks the Basantpur thana. It is a correct map.

Cross-examined by Mr. Garth.—This is a map of thana Basantpur, and shows the boundaries of the police-station. We have no map in the Survey Office, but the original from which this is copied is in the Police Office. Babu Waliullah in the Collector's Office gave me the original to copy.

Anjur Kulmi, examined by Mr. Sutherland, said:—I am a cultivator. I was formerly a chaukidar of Ramapali, but I am not one now. Ramapali is five *coss* west of Basantpur thana, and about one mile to the south of Maharajganj. A Gorakshini Sabha was formerly held at Maharajganj. I was not present at the first meeting, but was there at the second, which was held about five or six months ago. There was a very large attendance. Ramnath Sing of Pasnouli was the Sabhapatty (Chairman).

Do you remember what Ramnath Sing or anybody else said at that meeting?

Mr. Garth.—I object to what happened at that meeting going down.

The Judge.—What any person said at that meeting is not relevant.

Mr. Sutherland.—Very well, Sir. As a matter of fact this witness does not pretend that any one in court was there. Witness continues. I know Ajudya Sing of Pasnouli who is present (identifies accused). I saw Ajudya, Ramnath, Dwarka Sing and Nakchadra. I saw them along with about 12 others,—sixteen in all, going in the direction of Basantpur. They had *lathis* and *dandas* in their hands. This was on a Wednesday about three months ago, more or less, very early in the morning, one *ghurri* after sunrise. On asking them where they were going, Nakchadra said: "We are going to Basantpur on some business." Nakchadra belongs to Nawulpur. Dwarka Sing comes from Pasnouli.

Mr. Sutherland.—Did you hear of a riot at Basantpur?

Mr. Garth.—I object on the ground that it assumes that a riot took place.

Mr. Sutherland.—I do not think so, as I am simply fixing the Wednesday with the day on which we allege that the riot took place.

The Judge.—I do not think it is material one way or the other.

Mr. Garth.—I don't want to ask him any question.

Mr. Sutherland.—If your Honour holds that we cannot give evidence that Gorakshini Sabhas were held at Maharajganj, and what was stated there by persons who are not defendants, then I get rid of four witnesses, but as I have a certain degree of responsibility, I would submit that the evidence is admissible as cause and effect.

The Judge.—You can argue the point. Will you tell me under what section you propose to make it evidence?

Mr. Sutherland.—I should say that anything that was said at that meeting is evidence against these men, as it connects the riot with what was said in the Gorakshini Sabha, and I submit that sections 6, 7, 8, 9, and 11 of the Evidence Act apply. With regard to the one which was held at the end of June or at the beginning of July, your Honour will see that it must have been pretty well known, towards the end of May, to all the surrounding villages that butchers had gone to Motihari to purchase cattle. If you hold that this evidence is either inadmissible or irrelevant, I would ask that it be put on record that my request was overruled. The case for the prosecution is that the cause of the riot was the teachings and sayings of the Gorakshini Sabha, and what transpired at the meeting held in the vicinity of Bassantpur and at places some miles distant.

Mr. Garth.—I submit that it cannot be evidence against the accused.

The Judge.—The Maharajganj meetings were long previous to the riot. Evidence of what was said would not be relevant against the accused.

The next witness called was Mahadeo Sing, who, in examination by Mr. Sutherland, said: I have been a chaukidar at Basantpur since Bhadra last. I know that a Gorakshini Sabha was held at Basantpur about three months ago. It was held at a tank which was on the north of Basantpur thana. I went to it. Roughly speaking there were about eight or nine hundred people

present. These people, who came from a large number of villages, assembled on the day of the meeting. I remember seeing Dya Ram, Debi Tewari, Gya Pandeh, Ramputh Sukul, Parmessur Sing (identifies accused), Ramnath Sahai (identifies accused), and Mutki (identifies accused) at that meeting. I know Dodraj Bhurri who was also present. The meeting was with regard to the cow movement (*gow ki bara men*), Pundit Jee, Mahibir Upadhya, from Maharajganj or Bhonjra was saying something.

Mr. Garth.—This will be evidence against only these three men.

Witness.—The pundit was saying that the people should each subscribe one pice worth of grain for the cows, and they should also subscribe two or four annas each according to their means for the purpose of releasing and rescuing cows from the hands of the butchers. It was also stated that the money should be subscribed and collected and kept in the hands of Parmeshur Sing for the purpose of defending any cases of *marpit* or any other cases that may arise. I informed the daroga of the Basantpur thana of all this on the same day, a short time after the meeting. The Sabha was announced by beat of drum on Wednesday, and it was held on the Saturday following. Debi Tewari, who is a resident of Karahi village, close to Basantpur, went round with the drum. I informed the daroga at the thana on the same Wednesday that the drums were being beaten announcing the Sabha. The information I gave with regard to the beat of drum and to the meeting itself were both recorded in the thana diary.

Rajrosun Chaukidar, of Basantpur, was also present at the Sabha with me throughout the meeting. When I gave information with regard to the preaching at the Sabha on Saturday, Rajroshun also accompanied me to the thana. There was no one else at the thana at the time we went to give information.

Cross-examined by Mr. Garth.—I was examined before the Committing Magistrate at Basantpur with regard to money being subscribed and used for the defence of those engaged in cow-killing cases. I did not tell the police the names of all those who were present. How could I tell the names of all? I could only name a few and they were put down. I was sent to the meeting by Khyrat Ali, daroga, who is a witness in the case. I gave the information to the daroga, and went away again. I had conversation with the daroga with regard to the matter, but cannot remember when it was—on the next morning or a day or two after, but not since. Since giving my evidence before the Committing Magistrate, I have had no conversation with anybody in regard to the case. I said before the Committing Magistrate that Mutki Rai was present at the Sabha.

Mr. Garth.—I wish to repeat his original deposition to him, as this man has not been mentioned.

The Judge.—His name is not in the original deposition. He has named six people.

Witness.—No one told me to put in Mutki Rai now, he was there. I was not reminded of this just now, but I know that he was there all along. I mentioned the names of a number of people before the Magistrate and can repeat them. There were Ramphul Sing, Kulnarain Sing, Domur, Khendari Rai, Ranjit Rai. I mentioned these five names to the Magistrate.

Mr. Garth.—Then I propose to put in his deposition to the Magistrate.

The Judge.—You should call his attention to the passage where he names other people. I think you ought to ask him if he named those other people. With these men it may be a matter of memory. If you wish to jog his memory you can do so.

Mr. Garth, however, preferred to close his cross-examination of this witness at this point.

Raj Roshun, called and examined by Mr. Sutherland, said—I have been a chaukidar at Basantpur for eight or nine months since last Sraban. I was present at a Gorakshani Sabha held on a Saturday about a little less than three months ago. There was a very large crowd of about six or seven hundred present at the Sabha. They were men belonging to Basantpur and other villages. Among those present who were previously known to me were Parmeshur Sing (identifies accused), Ramnath Saho of Lucknowra (identifies him), Ranjit Rai of Mura, Kuldip Rai of Mura, Ram Kissun Rai of Kuhra, Sudama Rai of Kuhra, Ramphul of Kuhra, Puran Rai of Kuhra, Rajmun Saho

of Lucknowra. There was a pundit at the Sabha who addressed the meeting. As far as I remember he said that cows should not be sold for slaughter, as cows were sacred (*lachmi*), that everybody should combine to give gram for the feed, that they should surround and take away (*chaka lena*) cattle and pay the money value.

Mr. Garth.—If there is to be any value put up on this evidence, the pundit's very words should be given.

The Judge.—He gives the substance. It is not to be expected that he could give the words.

Mr. Garth.—What I say is this. It is only by turning his language in a particular way that you can make the pundit talk treason. This witness should be kept down to what the pundit said. A chaukidar who wants to understand treason might understand a great deal. The whole object of this evidence is to prove that the pundit talked treason. We have here what the pundit did say, and what he said was perfectly right and proper, and what he was entitled as a citizen to say. It is dangerous to ask this man to say what he understood the pundit to say.

The Judge.—I see that there is a great deal of force in what you say, but I do not think that this man could give the exact words.

Mr. Sutherland.—It is impossible for him to give the *ipsissima verba*, and he has given in his own language what he understood the pundit to say.

Witness continued.—Many things were said at the meeting. Parmeshur Sing was present, but I could not hear very much on account of the *hulla* (noise). Information with regard to the Sabha was given at the Basantpur police by Mahadeo Rai and myself. The Sabha was by the garden and tank on the north side of Basantpur.

Cross-examined by Mr. Garth.—I was with Mahadeo all the while. At the Sabha some men were standing and others were seated in some waste lands in the north side of the village, where there is a garden and tank. I was standing along side the Sabha outside the crowd, but very close to it, about one step away. I had been sent there to see and give information. I was about sixteen feet away from the pundit who was seated on a chair facing the north. I was in uniform. I cannot say if the pundit saw me or not. I cannot suggest any reason why the pundit did not see me. I did not hide or conceal myself from the pundit. Everybody could see us. There was nothing secret about this meeting from first to last. What I have said are the exact words used by the pundit. I was sent by Hazir Ali Munshi who told me to go to the Sabha and see what is being done. The first time I was examined before the Committing Magistrate was on the 13th of this month. Since the time that Mahadeo was examined before the Magistrate we have had no conversation. The police told me to give evidence before the Magistrate. Hazir Ali Munshi told me that the Magistrate had to record my deposition. I did not know what evidence I had to give. I do not know that there was a previous charge by the police against Parmeshur Sing for rioting. I have not heard of it. I do not know, nor have I heard that he was acquitted in that case. I do not know of Parmeshur Sing being in trouble before. Mahadeo and I both gave information, and had it recorded. Both of us spoke. Mahadeo spoke first, and then I was asked, and I spoke.

Surendra Nath Neogy, Assistant Surgeon, examined by Mr. Sutherland, said:—I remember in September last examining some men suffering from gunshot wounds. At the time of the examination of those men, I made a note of what wounds they were suffering from. I remember examining a man called Khedu Koeri on the 7th of September last (looking at his notes). He had a gunshot wound on the right side of the lower jaw. It was bone deep, the bone being exposed. He had another penetrating wound on the left side of the chest, probably caused by shot or bullet from a gun. He had two similar gunshot wounds below the left armpit, two more gunshot wounds on the outer aspect of the left elbow, and he had another gunshot wound on the right side of the chest over the hepatic region. I extracted bullets in the morning. I extracted a bullet from the right angle of the lower jaw, and another from the back of the right side of the chest close to the wound last mentioned. The lead extracted from this wound was from the back under the skin. It had traversed the body. I was examined by the Joint-Magistrate

of Siwan when I identified the bullets found. As far as I remember, I identified both (identifies both again). When Khedu was admitted, he was very low and depressed. He complained of pains and was expectorating blood. I examined Gudar Kandu on the 8th of September last. I found two gunshot wounds on him, one on the left side of the chest and the other on the neck. He was then in a good state, but I noticed that he was under the effects of a shock. I am quite sure he was alive at that time. At about 9 A.M. of the 9th of September last, he suddenly began to cough violently. He coughed for four or five minutes and his respiration stopped. He died in my presence. I held a *post mortem* at 4 P.M. Refreshing my memory from my report, the cause of death was asphyxia brought about by a collection of blood on the left side of the chest compressing the lungs. This was caused by a gunshot wound in the lung. I also examined a man called Dodraj Burhi on the 12th of September last. He had a penetrating gunshot wound in the middle of the left forearm, a non-penetrating gunshot wound in the outer aspect of the left arm, and another non-penetrating wound on the palm of the right hand. On the same day I examined Mutki Rai. He had a gunshot wound on the bridge of the nose of the size of a pea. I examined Ajodya Rai on the 24th of September last. He had a healing ulcer on the left cheek, probably the result of a wound caused by a gunshot. The ulcer was of the size of a two-anna bit. I came to the conclusion that it was a gunshot, because in probing the wound I found it passing in about 1½ inches, besides the shape of the wound also forced me to come to this conclusion. The ulcer was apparently of long standing, about a fortnight old or so. I also examined constable Birda Singh on the 12th of September last. He had a *lathi* mark on the left side of the forehead, about an inch and half long and half an inch broad.

Cross-examined by Mr. Garth.—From the nature of the wounds I suppose it to be a *lathi* wound. The two sides were marked and not the middle. It could not have been caused by anything but a *lathi* or something like it. I cannot swear whether the thing with which the blow was struck was of iron or of wood. The wound was probably not caused by a fall. I examined him at the thana while I was there, and no one told me how he received this wound. Usually a letter is sent stating how a person has been injured. I have not seen Birda Sing since. I was not shown the gun from which these shots were fired. I was told that cartridges were used, but I was not told how much powder was used. I can form no opinion as to what the distance between the gun and the men were, but from the nature of the wound I should say that it had lost half of its velocity. From the scattered condition of the wounds, they must have been some distance from the gun. I cannot say how far the shots would begin to scatter. I cannot swear that these people were not a hundred yards from the gun, or that they were nearer or further.

This concluded the cross-examination of this witness, and the court decided to adjourn at this stage.

Mr. Garth then applied for this release of some of the prisoners on bail. They were prepared to furnish substantial bail. He had no one to instruct him in this case, and the muktear who was in the court below was there only a short time. He had not been able to see his clients, and could get no instructions in consequence.

The Judge.—You can communicate with them in the jail.

Mr. Garth.—Yes, but that will be in the presence of the police, and personally I would rather not go there.

The Judge.—I have refused bail before. You can communicate with them either here or at the jail. If you have no other grounds, I am afraid I must refuse again.

The court then adjourned for the day.

The 29th November 1893.

THE hearing of this case was resumed before Mr. H. W. Gordon, C.S., Sessions Judge of Chapra, to-day (November 29th). The large court-room was crowded to overflowing, the attendance being larger to-day. A large majority of those present were Hindus of the well-to-do class. The court had to be cleared two or three times owing to the passages being blocked up by the people

who swarmed in the varandahs and in the court compound. The first witness called was Mir Ahsan Ali, who said: I am meat agent at Dinapur in the Commissariat. I supply meat to the troops at Dinapore. In May last there was an arrangement with Nathuni and Jhunju. The Commissariat officer of Dinapore, Captain Modgett, gave me a *purwannah* in the name of Nathuni. The Captain Sahib gave me the *purwannah* and I gave it to Nuthuni. A copy of it was filed in the lower court and the original is with Nathuni. This copy was made at the same time as the original was written. The original is never handed over without copies being made in a book. The copy put in in the lower court was compared by me with the original, and I can testify to its correctness. The book in which the copy was made is not here. This book in my hand contains entries of purchases. This, which I filed, was a copy of the *purwannah* in the book.

Mr. Sutherland.—I tender it.

Mr. Garth.—I object.

The Judge.—You have got neither the original nor the copy made from the original.

Mr. Sutherland.—I will recall this man.

The Judge.—All right; at present there is nothing to show why the original could not be produced or why the copy made from it could not be produced.

Witness.—The book which has the copy of the *purwannah* is at Dinapore. I give a copy of the *purwannah*, which is issued in order that there should be no interference with the butchers in charge of the cattle.

Mr. Garth.—I object. This is the contents of the document.

Mr. Sutherland.—This is independent of what the document contains. I asked why these *purwannahs* were issued, and I do not myself know what they contain. The reason for issuing them is independent of their contents.

The Judge.—You cannot give evidence of its contents.

Mr. Sutherland.—I don't wish to do so. The witness continued:—The reason why these *purwannahs* are issued are that no one should interfere with the butchers, that they might receive help if necessary in case of obstruction, and to enable the butchers to bring the cattle to the Commissariat Department in safety. I gave Nathuni the *purwannah* on the 26th of May last, and also made a banker advance him Rs. 900. It was not given in my presence. I gave the mahajan directions to give the money to Nathuni.

Mr. Garth.—I submit that any *hukum* given in the absence of the accused is not evidence against the accused.

The Judge overruled the objection, but recorded it.

Witness.—The *purwannah* and the Rs. 900 were given to Nathuni for the purchase of cows and bullocks for the Commissariat; all this took place at Dinapore. I did not see how many men went with Nathuni to purchase the cattle. Two or three months after this one Jhunju brought me a letter. The letter reached me on the 3rd September, and I filed it in the lower court.

Mr. Garth at this stage brought to the notice of the court the fact that the witness was refreshing his memory from a memorandum in his hand. This was taken away from him by the Judge.

He continued,—This is the letter I received from Jhunju (marked for identification). On the 16th September, Elahi, the brother of Nathuni, brought to me 120 head of cattle—cows—at Dinapore. Out of these 80 were purchased by the Commissariat officer in my presence at Rs. 8 per head; this comes to Rs. 640, but the money was not paid in my presence to the *mahajan* who advanced the Rs. 900. The Rs. 640 were paid by the Sahib to Elahi in my presence in two instalments, and these are the entries in this book. The Sahib (Captain Modgett) made the entries in this book in my presence. The entries are in English. I can read a little English (looking at the book). This is the entry.

Mr. Sutherland.—I tender it.

Mr. Garth.—I object. It is not in his handwriting, and it has obviously been altered. It is made by Captain Modgett, who ought to be called, especially having regard to the fact that it is the only entry among several pages back that has been altered in various particulars. I submit that it cannot be proved by this man.

The Judge.—It is an altered entry, and it is in a language which is not the language of this man. I do not think it can go in. It ought to be proved properly.

Cross-examined by Mr. Garth.—The ordinary practice when the Commissariat wish to obtain cows is that a *purwannah* is given and money is given, and with the money the butchers go and purchase cows, and when they come back the cows are taken over by the Commissariat officer, and when cattle are approved the price is settled and the money is paid. They receive no advance from the Commissariat Department. They purchase and bring the cattle, and they are paid for such cattle as are approved at the time of taking over by the Commissariat. The transaction in this case was done in the usual course. There was no advance made on this occasion. That was the reason why the Commissariat officer paid Elahi when he came back with the cattle. When the butchers go away they agree to bring so many head of cattle. The number of cows wanted is stated to them. No penalty is imposed upon them if they do not succeed in bringing the requisite number: only as many as are approved are taken. They are brought and bought subject to their approval by the Commissariat officer.

Mr. Sutherland.—Like the Jacob diamond—*pussund, yah na pussund.*

Witness.—I told the Magistrate that I had Rs. 900 given to him. I did not say that I gave him an advance of Rs. 900 myself. My deposition before the Magistrate was read over to me and I signed it in English. The statement that "I had advanced Rs. 900 to Nathuni" is not true. I met Mr. Manisty, the Collector, at the station before giving my evidence before the Magistrate. He spoke to me with regard to this case. He did tell me that Nathuni and the butchers had stated that I had given them an advance of Rs. 900. I told Mr. Manisty that I had the money given to him (*diliya dwah*).

Mr. Garth.—What I would suggest is that before he went into the box he was told that the butchers had said that they received the Rs. 900 from him. This was done to show that the cattle were Government cattle, but I shall show that this was not so.

Witness.—Nathuni and these other butchers were not at liberty to sell these cattle to anybody before they first submitted them to Government. If they had disposed of any cattle before submitting them, they would have been punished. Such a case never happened, and therefore no one was punished within my knowledge.

The Sahib says that if you do not bring the cattle soon, I will punish you and report you to the Magistrate. He said so in my presence.

Mr. Sutherland.—This is a sort of moral persuasion. He says that the Commissariat officer tells them that. There is nothing to show that a penalty has ever been exacted.

Re-examined by Mr. Sutherland.—I said to Mr. Garth that I did not myself give Nathuni an advance of Rs. 900 I had the money given to him by a *mahajan.*

Mr. Sutherland.—I want to ask him why he got the *mahajan* to give Nathuni the advance of Rs. 900.

The Judge.—I understood him to say that he did so because he had not got the money himself.

The witness continued.—I gave my evidence before the committing Magistrate in the same language as I am using now (Hindustani).

Mr. Sutherland.—I put this because it is not quite possible for a young officer to translate "*diliya dwah*" as "I gave."

The Judge.—It is possible.

The next witness called was Nathuni.

Mr. Garth.—Before this man is examined I ask that the first information given by this man be produced. I gave notice that I should call for it when the time came.

The Judge.—What do you want it for?

Mr. Garth.—Because he was the man who gave the first information in the Bala case.

Examined by Mr. Sutherland, Nathuni said:—

I received orders at Dinapore for the purchase of cattle from the munshi whose name I do not know (identifies last witness). This is the munshi who

gave me these orders about three months ago. In compliance with his order I purchased cows and four oxen. For the purpose of purchasing I took with me four or five persons, among whom are Elahi my brother, Jhunju, Tanna, butchers. These are the only names I can remember. At the time of giving me the order to purchase cattle the munshi also gave me Rs. 900. He only gave me the money. He also gave me a *purwannah* which is at my house. I went to Motihari to purchase the cows along with five or seven people, including those I have named. I purchased 131 cows including four bullocks. When we were returning and had arrived at Salimpur ghát in Chapra zilla, and were going across the Ghogari bridge, about 30 or 32 people were seen coming towards us armed with *lathis*. When they reached the cattle they said—(witness went on to inform the court as to what abuse was used).

Mr. Garth.—I object to what the people said.

Mr. Sutherland.—At all events they abused them. I submit that I am entitled to give that as a part of the *res gestæ*.

The Judge.—Yes, as a part of the *res gestæ*.

Witness.—They followed us about two miles, abusing us all the way. Three out of the rioters went off in the direction of Lucknowra and Nurharpur. We were then about a *kos* from these villages. I then sent off one Muddru, one of our party, with my *purwannah* to the Bala Koti which was a little more than two or four bighas distant. We all stopped in that place with the cattle. There were indigo-fields there on both sides of the road, but there were no crops. Babu Parmeshwar and Ramnath (identifies them) both on horseback with a mob numbering about 200 or 250 men came up. I did not know their names until the people there said that Parmeshwar Sing and Ramnath Saho had arrived. Babu Parmeshwar and Ramnath then said *maro pito sala log ko aur goru lejao.* These two men with the assistance of the mob snatched away the cattle. I then went to Saidpura, and taking Jhunju and Hossainbox with me went to Basantpur. Saidpura was a mile from the place where the cattle were taken away, and the Basantpur thana is one *kos* from Saidpura. I did not see the Bala Koti Sahib. When these men had taken the cattle off about one bigha, I went off towards the thana. I did not see anyone come from the factory. I saw the cattle again at Khowaspur the next day. The matter of which I have spoken just now happened on a Thursday, and I saw the cattle at Khowaspur on a Friday, a little less than two miles from the place where the cattle were taken away. I gave information at the thana and accompanied the writer constable and two sepoys to the place where the cattle were snatched away. This was on Thursday night. From there I went to Khowaspur. The cattle remained all Friday at Khowaspur, and we took them away to Basantpur on Saturday. We kept them in a garden attached to a *sarkuri* bungalow about two or four bighas from the thana. The cattle remained here for four days, and after that they were taken to the thana. This was on a Wednesday, when only a little of day-light was left. The sepoy guard and all the butchers came to the thana with the cattle. When we were at the thana with the cattle at about 7 P.M., Babu Parmeshwar Sing and Ramnath Saho with about four thousand men came to the thana. (The witness first said Ramnath "Sing," and Mr. Garth having drawn the attention of the Court to this, it was noted.)

The crowd with the two men named came up to the gate of the thana. They were shouting *Pahwari Baba ke jai* and *Burran Baba ke jai*, and the police told them to "go away and come back next morning, when the sahibs will come and you can get the cattle." They would not listen, and one of them struck Birda Singh, a sepoy, on the head: then Gaitri Babu said, "if they won't listen, fire upon them." I did not see anything more. When the guns were discharged I ran off through fear and hid myself for about two hours. This was on the night of Wednesday. I had seen both Parmeshwar and Ramnath during the same day when a little of the day was remaining. There were then about twenty or thirty people sitting together, and the daroga asked me to identify these men, Ramnath and Parmeshwar, and I succeeded in doing so. I was asked to identify these men in connection with the Bala occurrence. After this we took the cattle to Dinapore. I did not go to Dinapore, but Elahi and the others took the cattle to Dinapore from Basantpur, starting soon afterwards. On Thursday morning the cattle were taken away to Rampur, which is about three *kos* from the thana. It was from there that Elahi and the others took the

cattle to Dinapore. Maharajganj was ten miles off in the road we took from Dinapore to Champaran, Motihari, when we set out to purchase the cattle.

Cross-examined by Mr. Garth.—I purchased cows with the Rs. 900 I received from the munshi. The Rs. 900 is the price of the cows. I did not spend more than that. It was given to me in cash. The munshi was in his lodgings when he gave me the money. I did not see from where he got the money. The money was in his cloth. I remember that—nobody told me to say that. This is what I saw. Before Parmeshwar and Ramnath came up on horseback I had not heard their names. The men in the mob called out their names The people said that Babu Parmeshwar and Babu Ramnath had come. They were talking about this to themselves. They called their names, and also addressed them by their names separately. It is true that they were doing this by the order of these two men. They said this on the arrival of Babu Parmeshwar Sing and Ramnath Saho. They were saying this among themselves. I left immediately for the thana and gave information at 11 P.M. The information I then gave is similar to what I am now stating. I sent Muddru to the Bala factory, but he did not return in my presence. I gave evidence in the Bala case.

Mr. Garth.—Have you heard the opinion the Magistrate has expressed with reference to your evidence in that case?

Mr. Sutherland.—I object to what the Magistrate said with regard to this man's evidence, because after all it is only an opinion and may be a wrong one.

Mr. Garth.—I am going to show that the Magistrate did not believe him, and not only that, but he said that no court would accept his testimony. There is this to be said, the man has been branded an impostor and a liar, and the Crown now ask you to believe him.

Mr. Sutherland.—The Magistrate's opinion is only an opinion after all. The Magistrate has formed that opinion and other people may think differently. The opinion of the Magistrate, I submit, is utterly irrelevant; otherwise we will have the whole of the judgment in.

Mr. Garth.—I only want to ask him if he has heard what the Magistrate has said with regard to his testimony in that case.

The Judge.—As Mr. Sutherland says, it is only an expression of opinion by the Magistrate. Is it relevant? The Magistrate may be entirely wrong.

Mr. Garth.—He may be, but I am entitled to have his opinion.

The Judge.—Well, it may go in for what it is worth. This court has got to form its opinion whether this witness is worth credence.

Mr. Garth ultimately put this question.—"Have you heard that the Magistrate said with regard to your evidence in the Bala case: 'I scarcely think any court will accept this testimony in the face of the police record.'"

The Judge.—Where do you get that from?

Mr. Garth.—It is in the judgment of the Magistrate in the Bala case. Not one of the witnesses was cross-examined in that case, and without any cross-examination this is what the Magistrate says. I mean to refer to that judgment hereafter. whether it is admissible or not.

The witness in answer to the question said.—I have never heard that. Continuing, he said:—I told the police that I had found out the names of these two men, Parmeshwar and Ramnath, and that they had both been present. I told the daroga that in my presence they were addressed by their names. When I went to the daroga I did know them. I told the police that I know these two men. I do not know the name of the daroga who took down my statement, but I can identify him. He is here. The mob did not want to purchase the cattle from me. They did not tell me that they were prepared to buy the cattle from me, and that these two men would pay me for them.

At this stage the court-room had to be cleared, the doors being completely blocked by the crowd.

Witness continued.—Neither I nor any of the butchers had any liquor to drink on the day of the Bala occurrence. None of us were drunk. Mr. Bean of the Bala factory was called in the Bala case, but I cannot say whether on behalf of the prosecution or defence.

Mr. Sutherland objected to the witness being pressed with regard to the proceedings in the Bala case.

Mr. Garth said that a cruel part of this case, as conducted by the Crown, was that whereas they made frequent reference to the Bala case, they had not allowed the defence to say a single word in connection with that case. They said that they had a conviction.

The Judge.—They cannot do anything of the kind. They cannot put in the conviction in that case.

Mr. Sutherland.—If your Honour will remember I made no mention of the conviction in that case. Leaving that out, I cannot see how a statement made by Mr. Bean in another case is relevant.

The Judge.—If you want to bring that out you had better put Mr. Bean into the box. This man denies it You are at liberty to prove that that man was in liquor, but you must do so in a proper way. I do not see that the transaction is connected with this case.

Mr. Sutherland.—In opening the case to the assessors when I referred to the Bala incident, I told the assessors at the time: "You are not trying the Bala occurrence, but you are trying this case." I referred to the Bala occurrence as a part of the history of this case.

Mr. Garth.—Persons are put into the box to say not only that the Bala riot took place, but also that Parmeshwar and Ramnath were the ring-leaders. I propose first of all to show that it is a lie that these men were there on the 6th, and that they manufactured the lie. That is the case for the defence. I submit that it is not fair to say that these men were the ring-leaders in the Bala case.

Mr. Sutherland.—In my opening I said to the assessors: "Do not connect that in your mind with this case. It is only an incident."

The Judge.—I do not see how the Crown could have avoided mentioning this matter. It is what led to the transaction.

The Court then allowed a short adjournment for lunch.

On the reassembling of the Court Mr. Garth called upon the prosecution to produce the record of the Bala riot case, as he wished, when it was produced, to put in the first information in that case for the purpose of contradicting the witness.

The Judge.—If you want to contradict him you must prove it first. You can have a summons upon the police officer who wrote it. I cannot admit it in this form.

At Mr. Garth's request a note was made to the effect that Mr. Garth had called for the records in the Bala riot case with the object, when it was produced, of putting in the first information in that case, for the purpose of contradicting statements made by this witness in his cross-examination, and that the learned Sessions Judge was of opinion that this document was inadmissible for this purpose until it was properly proved.

Mr. Garth (putting the first information to witness and pointing to a mark at foot).—Is this your mark?

Mr. Sutherland.—The proper course is to call the writer. How can this man be expected to recognize a mark.

Mr. Garth.—Rather than do that I will put this document to every policeman that is called. The Crown say that they are not instructed by the police.

Mr. Sutherland.—I am not being instructed by the police.

Mr Garth—Your Lordship will see I do not want to call evidence. It may not be necessary for me to call any evidence at all.

Witness.—The information I gave the police in regard to the Bala occurrence was read to me by the police. I cannot identify this mark as the mark put by me. On the first information I did not make any mark; I only touched the pen.

The Judge.—I find that this document was written by the police officer, Akbar Ali, who is a witness in this case on behalf of the Crown.

Witness continued.—I told the committing officer all that I am now stating. I stated to him that Parmeshwar and Ramnath came to the thana gate with about 4,000 men, and that Birda Sing had been struck. All I told the Magistrate on that occasion was that subsequently that night the mob came and attacked the thana, and the police fired on them, and I and the other butchers hid ourselves. I did mention the names of Birda Sing, Ramnath, and Parmeshwar.

Mr. Garth asked his Honour what course he would follow with regard to the reading of depositions without specially putting them in. There was a divergence of opinion on this point, and Mr. Justice Wilson had held that Counsel on both sides were allowed to rely on them and read them without specially putting them in.

The Judge.—Except for the purpose of contradicting a witness.

Mr. Garth.—I desire to take your Honour's ruling because I desire to put in a great many of them.

Mr. Sutherland.—I do not object. I think he is perfectly entitled to use them, provided, of course, he calls the attention of the witness to the particular passage.

The Judge.—Read the depositions, and if a witness denies a statement, you can put it in.

In further cross-examination the witness said:—On the 6th (Wednesday) I met Mr. Boileau. This was in the morning, a little after sunrise. All the butchers there were examined by Mr. Boileau. I remember the Inspector Gyatri Babu being present with the Inspector. Outside the bungalow there were then a number of people sitting down. I know a policeman called Hazir Ali. I did not notice whether Hazir Ali went outside and spoke to these men who were sitting outside. I do not remember his going out and asking them which of them were summoned. After my examination by Mr. Boileau I identified these men. After Mr. Boileau had gone away. Mr. Boileau took down my statement. He asked me whether I could identify the men, and I said "yes." None of the people who were waiting outside were taken to Mr. Boileau in my presence. Parmeshwar Sing and Ramnath were not among those who were waiting outside. I saw them first on that day (Wednesday) at 3 P.M. in the Basantpur thana. I had not seen them that day outside the thana. From the time I was examined by Mr. Boileau till three o'clock I was with my cattle at the bungalow. I was brought from the bungalow to the thana by a constable whom I cannot identify, because it was three months ago. When I arrived at the thana I found Ramnath and Parmeshwar there in the upper story (kothi). At that time Gyatri Babu was also there. It was in Gyatri Babu's private room. I cannot tell when they left the thana, because after identifying them I went back to my cows. Another person, Tanna Kassye, also went up to this room with me and the sepoy. Nobody at any time while I was in this room asked Parmeshwar and Ramnath what their names were. I was satisfied that my identification was correct. I did not know the 20 or 30 other men who were at the time in Gyatri Babu's room. I cannot tell all that happened in the room. I have told all that I know of what happened there. Gyatri asked me "Can you identify the men?" and I said "yes." Then I identified the men. I looked around among the 20 or 30 men and pointed out these two men. The Inspector was sitting down. Before this I looked about, but did not see them. I received the price of the cattle from the Barra Sahib of the Commissariat. I did not go, but Elahi went to Dinapore and received Rs. 640. Elahi gave me the money. The munshi has been repaid the Rs. 900. I repaid the money after the cattle were sold.

To the court.—I was left at Bassantpur. Elahi got the money, and it was paid back to the Munshi.

To Mr. Garth.—I got the Rs. 900 in this way: I got Rs. 640 from the Sircar, and I made up the balance from the money I got from the sale of the rejected cattle in the bazar.

Jhanju butcher, called and examined by Mr. Sutherland, said.—I know Nathuni Kassye. I went with him about two or three months ago to purchase cattle to the Motihari district, where we purchased 131 head of cattle, among which there might have been three bullocks. The purchase-money was taken by Nathuni. Besides Nathuni and myself there were about 17 other Kassyes who went to purchase cattle. After purchasing for the Commissariat we were returning to Dinapore, and while we were on the road we were interfered with. On a Thursday there was a *rók tók*. We were first interfered with when we reached the Gogra Bridge. About 25 or 30 persons first came to us. They were armed with sticks and abused us, and said they would not let us go. The people said that it was the order of Babu Ramnath and Babu Parmeshwar that if there were any cattle being taken along by Kassyes, they were to beat the

Kassyes and snatch away the cattle. Two or three of the men from the mob ran off to give Babus Ramnath and Parmeshwar information of the stoppage. Nathuni gave the *purwanuah* to Muddru to take to the sahib of the Bala factory. We were driving along the cattle, while the mob followed us and kept on abusing, and saying "We will see *salas* where you take the cattle." We were going southwards, when about a couple of hundred men from the south, headed by two men on horseback came up. The people asked "Babu Parmeshwar Sing and Babu Ramnath, what are we to do?" Babu Parmeshwar Sing and Babu Ramnath said "*maro pito, aur cheen lao moweshi ko.*" (Beat and thrash them, and snatch away the cattle.) This is Babu Parmeshwar Sing and Ramnath Saho (identifies them). Before that occurrence I did not know them neither by name nor by sight. After they snatched away the cattle I ran away through fear of my life to Saidpura. At Saidpura I met Nathuni. I remained there a short time, after which I accompanied Nathuni to the Basantpur thana, where Nathuni lodged the first information. At night the munshi went to investigate the matter, and I and Nathuni went along with the police. We went to the Bala koti, and then with the munshi to Khowaspur, where we found the cows before sunrise. At Khowaspur I looked after the cows. We took the cows to graze near the river Basawan, and a large party, numbering about 200 people, collected on the opposite bank of the river, which was in high flood. They were armed, but I could not say what caste of people they were. We then drove the cattle from there to Khowaspur, which was a little way off from where the cattle were grazing The cattle were kept there all night, and after that they were driven to Basantpur by the butchers. I went along with them, as did the other butchers and the sepoys. I did not go to Basantpur with the cattle. On the following Tuesday I went to Basantpur.

There the cattle were in a *bagicha* near the bungalow. On Wednesday evening the cattle were taken to the thana. There was a disturbance at the thana that evening. About three or four thousand people came to the south side of the thana. I was with the cattle at the time. It was about an hour and-a-half after sunset the crowd were shouting *Pohari Baba ke jai! Burrun Baba ke jai!*" I recognised Parmeshwar Sing and Ramnath in the crowd of rioters. They were demanding the release of the cattle and making a great outcry. The daroga said: "We cannot release the cattle just now; wait till the sahib comes." After this they became very violent, and when the guns were fired, we went and concealed ourselves.

This closed the examination-in-chief of this witness, and as it was after 5 P.M., the Court adjourned.

The 30th November 1893.

THE further hearing of this case was resumed to-day (November 30th) before Mr. H. W. Gordon, C.S., District and Sessions Judge of Chapra. The Court was quite as crowded as on the two previous days. Great difficulty is being experienced in this case from the want of an official interpreter, and since the commencement of the trial the pleader instructing Counsel for the defence has been translating Mr. Garth's questions to the witnesses (who mostly belong to the ignorant classes).

Before proceeding with the cross-examination of the last witness, the learned Judge asked Counsel on both sides how many days they thought the case would last. Only five days had been fixed for the hearing, and it seemed very certain that it would take much more than that.

Mr. Garth thought that it would not take more than till the end of next week. The learned Judge accordingly put off other cases which had been fixed to come on next week.

Mr. Garth then applied for summonses against Mr. Boileau, Babu Gyatri Prosanno Ghosal, and a number of other police officers for the purpose of proving and putting in the first information given by Nathuni and Jhanju in the Bala case, and the letter brought from Khowaspur to Bassantpur. He was certain that these documents were with one or other of these police officers, and he applied for summonses against all of them to make sure of it.

The Judge —I think the first information was produced yesterday.

Mr. Garth.—It was produced, but it was not allowed to be put in. I also want that letter from the writer-constable at Khowaspur.

It having transpired that most of the police officers against whom Mr. Garth applied for summonses would be examined on behalf of the prosecution, Counsel for the defence, after a little further discussion, thought that it would perhaps be better for him to wait till the police officers, who would be called on behalf of the Crown, had been examined. If he then found it still necessary to do so, he would renew his application.

Jhanju Butcher, cross-examined by Mr. Garth, said.—When I and Nathuni reached Khowaspur we made a statement to the munshi or writer-constable. My statement was not recorded. Then I went with the writer-constable to Bassantpur. I do not know the name of the constable. I did not come to Bassantpur with the constable. Jhanju, Nuthu and Hossen Box went to Bassantpur. I went with Nathuni to Bassantpur where Nathuni had the first information written while I was sitting there. Raj Roshun Chaukidar did not come with Nathuni and myself from Khowaspur to Bassantpur. Raj Roshun Chaukidar did not bring a letter from the Munshi Hazir Ali of Khowaspur, to Bassantpur to my knowledge. The information given at Bassantpur by Nathuni was given in my presence and in my hearing. He did not say that he did not know the names of the people he was complaining against. He said he knew their names. He said that the mob said that Parmeshwar, Ramnath and Rajmun gave the orders, and that they (the mob) were acting under these men's orders. He did not say anything else regarding them. That is the only mention he made of their names. These people I have spoken of did not wish to buy the cows. None of them. None of us (the butchers) had had anything to drink this day. I never drink liquor. None of the butchers with us had anything to drink that day. Since my examination before the Committing Magistrate, I have had no conversation with the police or with any one else regarding this case, not even with Nathuni. I have had no conversation at all with Nathuni since then, not even on other matters, nor have I spoken to anyone about anything since then.

The Judge.—I do not think he understood your question.

Mr. Garth.—It shows to what length he is prepared to go.

Witness continued.—I remembered what I have now stated when I was under examination by the Committing Magistrate. I was present at Bassantpur when Nathuni was giving his information. Nathuni stated all that had occurred. Before the Committing Magistrate I said that I had recognized Parmeshwar and Ramnath at the riot on the 6th of September. I did not tell the Magistrate how many men the mob consisted of I did not remember it then. I ran away and hid when the police began firing upon the mob. I did tell the Committing Magistrate "in fear I hid myself and then I heard the firing."

Both statements—the one I made before the Committing Magistrate and the one I am now making—are true. On that night Nathuni and myself were together all the time. I do not know that Nathuni said he received an advance of Rs. 900 to buy the cows. I was not present at Dinapur when he got the money.

Mr. Garth.—I tender the deposition in the Lower Court. (Admitted and marked.)

In re-examination he said:—On the night of the riot at the Bassantpur thana, from the time that the mob came up till the time that I went and hid myself Nathni and I were separated among the cows.

Elahi Butcher, examined by Mr. Sutherland, said:—I went to the Bassantpur thana on a Wednesday about three months ago. On that evening there was a riot. At that time the cattle were in the thana. There was a large crowd which came up shouting *Pohari baba ke jai! Barran baba ke jai! Mahabir baba ke jai*, and making other cries. They demanded the release of the cattle. The darogah refused. They rushed at the thana. I hid, and the firing commenced. The next morning I drove the cattle to the Rampur koti, and from there two days after I took the cattle to Dinapur where I arrived after four days.

I arrived at Dinapur with 120 head of cattle. Eighty head of cattle were approved of and purchased by the Commissariat who paid me one day Rs. 480 and another time Rs. 160, making a total of Rs. 640. The rest of the cattle which were rejected for various causes I sold in the bazar.

Cross-examined by Mr. Garth.—I got Rs. 160, or at Rs. 5 per head, for the cows I sold in the bazar. That is Rs. 800 for all, and I got this money,

and paid up the mahajan. I got no receipt. There is no document in existence to show that I paid this money. The mahajan's name is Jamadar, and he lives at Nuggragaon. On the night of the riot, in the dark I did not see any of the mob.

Re-examined by Mr. Sutherland.—The mahajan Jamadar who lives at Nuggra carries on business at Dinapore. On the night of the riot I saw the men, but did not recognize them and could not identify them.

Mr. Sutherland.—The next witness is Sujad Hossein. I am not calling him to prove anything against the present accused, but to prove that on the evening of the 6th of September he saw a number of men from several villages going in the direction of Bassantpur armed with *lathis.*

Sujad Hossein examined by Mr. Sutherland said.—I went to the Bassantpur bazar on Wednesday about three months ago. When I was returning I noticed something unusual. At the west of Kurria Bagh I saw a very large crowd coming along armed with sticks. They were going eastward in the direction of the Bassantpur thana. Kurria Bagh is on the north-west corner of Bassantpur, about half a *cos* from it. I recognized eight men in the crowd who are not present in Court. I can name all these eight men. Two of them are residents of Patantoli.

The Court.—All this has nothing to do with the case.

Mr. Sutherland.—These men were from several villages. It might afterwards be said that there is no evidence.

The Court.—You do not show any connection with these accused persons. I do not want to have the record of the case overburdened uselessly.

Witness.—The others came from Nundpur, which is about two *cos* from Patantoli.

Cross-examined by Mr. Garth.—I was first asked to give evidence in this case on the Sunday "before" the riot. I do not know the name of the police officer who asked me to give evidence. Ali Akbar, the jamadar of the Bassantpur thana, asked me. I had forgotten his name. I knew his name. I knew his name when he asked me. I have seen him outside here in the court compound where I have been with him. I have never given evidence for the police before to my knowledge. I cannot remember if I have. I have never given evidence in any other criminal proceeding. Ali Akbar asked me in the thana to give evidence in this case. The bazar is close to the thana, and I was at the bazar. I went of my own accord to the thana. I went to give my statement. Rahmat Ali had told me to come to the thana and state what I saw on Wednesday on the road. This was on the Sunday "before" the occurrence. (Evidently misunderstanding the meaning of the word "Kabal.")

Question being differently put:—It was on the Sunday after the occurrence. I and Rahmat Ali do not go about everywhere together. Rahmat lives in the same village, but in a different hamlet. We sometimes meet in the bazar. Occasionally when I meet him we walk together. I had not forgotten this a little before. Within the last year I do not remember having walked along with him. On this Wednesday we were walking together. I had not forgotten this occasion when I said that I did not walk with him within this year. I meant that I did not walk with him for a year before this. When about to return from the bazar I met Rahmat Ali, and we walked away together. We had occasionally met in this way previously, and walked along together. I had no conversation with Rahmat Ali. Dumri Khan was with me. He is not a friend, but he and I live in the same hamlet. Dumri Khan was with me. He is not a friend, but he and I live in the same hamlet. Dumri Khan also went with me to the thana on Sunday. We were all three together. The thanadar, jamadar, daroga called us in. I and Dumri were together in the bazar; then we met Rahmat when about to start. We were all three together when the thanadar called us. Between the time of going to the thana and the Wednesday on which I saw the rioters I told no one of what I had seen. I am a cultivator, and get about 10 or 15 maunds in each fasul. Some people on going to the bazar on market days do have *lathis* in their hands. I do not carry a stick when I go to the bazar, but I sometimes do when I go to my cultivation. Sometimes I go to the bazar with a switch or a small cane.

Re-examined by Mr. Sutherland.—"After I saw the rioters on Wednesday I told the police. I was mistaken about the meaning of "kabal," and so I said I was asked to give my evidence on the Sunday "before" the occurrence.

Rahmat Alli, called and examined by Mr Sutherland, said:—I saw the riot near the Bala Koti. It was on a Thursday about three months ago. I was loading indigo on a cart when I saw some cattle coming from the north, along the road. There were a number of *beparis* and some 20 or 30 men. From the opposite side (south) a large crowd, numbering some 200 or 250 men, came up to the Hurdia Bridge, and there was a riot. They made a *hulla* and tried to snatch the cattle from the *beparis*. In this crowd I recognized Parmeshwar (identifies him). He comes from Lucknowrah, Nahurpur. (Mr. Garth drew the attention of the Court to the fact that witness first said Lucknowrah and afterwards said Nahurpur.) I also recognized Ramnath, who is a resident of Lucknowrah and Rajmun Saho who is also a resident of Lucknowrah (identifies them). They are *chachara bhais*. I knew them before both by name and by their features. These people came with the crowd of 200 or 250 men and were mounted. Permeshwar was on a white horse, Ramnath was on a "lal ghora," and Rajmun was on foot. When the *hulla* began the Nil walla sahib came from the *koti* and the rioters ran away. I went away with the cart when the sahib came. I went to Bassantpur on the Wednesday after this occurrence. Three of us were returning from the bazar—myself, Sajad Hossein and Dumri Khan—when we saw the people of Basawan and Nundpur coming in the direction of the bazar at Bassantpur at about sunset. They were about 50 or 60 in number. I can mention the names of eight or ten of these men.

Cross-examined by Mr. Garth.—I was examined in the Bala riot case. Before I was examined in that case I had not said anything to anybody. The indigo planter whom I mentioned was Mr. Bean. He is now at the factory, which is about 30 miles from here. Mr. Bean came out and saw what had occurred. Mr. Bean knows Parmeshwar, Ramnath and Rajmun. I cannot say whether Mr. Bean saw them or not. Mr. Bean saw them. If Mr. Bean was here he would be able to say so?

This question was disallowed.

Witness continued.—I was about seven or eight bighas away from the scene of the occurrence. I was off the road. I cannot say whether Mr. Bean was examined in the Bala case. I have not heard that he was. I was doing work for the factory at the time. I received an advance in *Choit* from the indigo Sahib, Mr. Bean, of the Bala Factory, for this work, and I was working this advance out. There is an attendance register kept in the factory in which the names of all carters in the employ, and to whom money has been paid, is to be found. In this book there are entries made daily of the quantity of indigo made over to the carters. On this day I loaded my cart with the usual load—12 or 13 maunds. I put in my attendance, had it entered, and left.

At this stage the Court adjourned for a quarter of an hour for lunch.

Witness in further cross-examination said—I was examined in the Bala case under the name of Shaik Rahmat Alli. My father's name is Shaik Abdul Alli. I cannot say whether any other carters of the Bala Factory were also examined in that case. If they were they may have been examined either before or after I was. Nobody asked me about this mob. I saw them. On that day I did not speak to either any of the *beparis* or to any one in the mob about this thing. I had no conversation with the members of the mob or the *beparis* on that day. Before to-day I have only once been examined before the Magistrate of Siwan (Aliganj). Before I was examined by the Magistrate of Siwan, I was never asked by anyone any questions regarding the occurrence. I received a summons to attend, but nobody told me anything. I can read and write. I can read the summons. My name was entered on the factory book on that day. I can identify some of the *beparis* whom I saw on that day. I have seen them here in the cutcherry for the last three days and had a talk with them. I did not see them at Aliganj. I went to give my evidence at Bassantpur. When I gave my evidence before I saw the *beparis*, but on that occasion I had no conversation with them. They did not speak to me, and therefore I did not speak to them. Here they spoke to me, and we had a conversation. They said nothing to me regarding my evidence. We had an ordinary conversation on indifferent matters not relating to the case. I got a summons from

the Crown, and I am here in consequence. I went away with my cart and did not see what happened to the men on horseback when Mr. Bean came. When Mr. Bean came all the men ran away in all directions, but not along the road. The men on horseback did not go along the road; they ran away across the fields. The first field was a *makai* (Indian corn) field which had a crop standing on it about four or five feet high. The horsemen rode through the *makai*. I know Nathuni Kassye, and I saw him there. I do not know what Nathuni did when Mr. Bean came, because I went away at that point. I did not then know whose name was Nathuni, and I do not know who went where. When I went away, about four or five *kassyes* were left there, but I could not say who was Nathuni. Nathuni was there when I went away. The sahib came from that side and I left. My work was loading indigo. I had finished loading, and as the sahib was coming along I went off. It is true that when Mr. Bean came and when the rioters scattered I went away because I had finished loading my cart. I do not remember if I told the Magistrate that when the sahib came and the rioters scattered I went on with my work. There is no *dosti* (friendship) between me and the last witness; but we eat together, both being Muhammadans. On that day three of us were together when we were returning from the bazar. We never go to the bazar together. I never before went along with Dumri Khan. I left the bazar before them, and was about a bigha in advance with Dumri Khan and Sajat called out to me. Then all three of us went on together for the first time in our lives. We had no conversation from the time we started from Bassantpur till we reached our homes. On market days lots of people come to the market, and people are in the habit of coming to the market from all the neighbouring villages, two or three miles off. Some come with *charris* and some without. None of us had *lathis*. I had no *lathi*, and do not know how a *lathi* is used. After this Wednesday, the next morning I heard that there had been a disturbance. I went to the dák bungalow on Friday, and the Magistrate sent for me and I gave my evidence. This was on the 9th day after the occurrence at Bassantpur. I did not go to the thana on the Sunday following the Wednesday on which the Bassantpur riot occurred. The chaprasi came with a summons for four days and finally served me. I had no meeting with the police. This (produced) is the summons, and this (produced) is the notice. These are the only summons I have ever had.

Mr. Garth.—(After looking at them) one is a summons to appear in this case in this Court and the other to appear before the District Superintendent. Neither of them is for his appearance in the Bala case.

Re-examined by Mr. Sutherland.—The day I was loading the cart with indigo I did not know Nathuni by name. I came to know his name at Bassantpur when I went to give evidence. I was examined by the Aliganj Magistrate at Bassantpur. I was returning from the bazar at the close of day when I saw the armed mob going in the direction of Bassantpur bazar. The people who go to the bazar at Bassantpur go in the day and return by evening. No one goes to the bazar in the evening.

Gyatri Prosonno Ghosal, examined by Mr. Sutherland, said:—I am Inspector of Police, Chapra.

Mr. Garth objected to this witness giving evidence in Hindustani as he has already given evidence in both the previous cases in English.

The witness stated that he could not express his ideas very well in English, and the Court ultimately allowed the witness to give his deposition in the vernacular. Continuing he said: I received information of the Bala occurrence, the 4th of September, at the Chapra kutcheri. On receipt of information I went to Bassantpur. I left here on the 4th, and reached that place at 11 on the 5th. Bassantpur is about 22 miles from here. The Superintendent and I both went to investigate the Bala riot case. The Superintendent ordered me to issue summonses in the names of several persons, and I did so. Among those against whom I issued summonses were Parmeshwar Singh, Ramnath Sahu, and Rajmun Sahu, who are here (identifies them). These people presented themselves at the Bassantpur thana at 3 o'clock on the day on the 6th. I had these men identified in connection with the Bala case in which Nathuni Kassye was the complainant. One witness Thanna Kassye identified three men, and the complainant identified only two men, Parmeshwar Singh and Ramnath Saho. Another witness, whose name I cannot remember, identified two of them,

Parmeshwar and Ramnath. When these people came they were put among twenty men or more, and all these people were made to sit down mixed up together in the verandah of the thana upstairs in the *kotah*. After this the butchers were sent for. They were not then in the thana compound. The butchers came after more than half an hour. When they arrived they were all kept below, and I sent for them one by one upstairs. As each man came up he was taken to where these fifteen or twenty men were seated and where I was, and I asked him can you identify any one? The first person among the Kassyes whom I called up to the *kotah* was Nathuni. I asked him: "Can you recognize anyone?" and he identified two of them, Parmeshwar and Ramnath. He pointed to them saying this is so, and this is so and so. Then I called the witness Thanna, and the same course was followed in regard to this man as I adopted in the case of Nathuni. When Thanna was asked to identify the men Nathuni was seated near me. The same procedure was adopted with regard to the third person who was called. This man was also asked: "Do you identify any of these men?" He identified the three men, Parmeshwar, Ramnath and Rajmun. Besides myself, the accused and the identifiers, the Police sub-Inspector and head constable were also present at the identification. The two last-named were seated near me. After the identification, the three butchers, who were called to identify the men, went away. When the butchers went away I took security from the three accused for their attendance on the following day, the 7th, at the thana.

Mr. Garth objected to the answer going down before the bond was produced.

The Judge overruled the objection, as the bonds were going to be produced, and it would be a pure waste of time.

Witness continued.—These (shown) are the three bail bonds.

Mr. Sutherland.—I tender them (admitted and marked).

Witness.—I cannot say if these bonds were filed in the Bala case. I took these bail bonds from them as accused persons at about 5 P.M. They did not give security in cash, but the security was other bailors whose names are on the bonds. After giving security they went away together with the three bailors. The fact that these men came to the thana, that they were identified, and that the bail was taken for their attendance was entered in the thana diary. This (produced) is the Bassantpur station diary. The entry in regard to the presence at the thana of the accused, their identification, and their release on bail is in the handwriting of Alli Akbar. These entries are signed by Alli Akbar and myself.

Mr. Sutherland.—I tender these two entries.

Mr. Garth objected on the ground that the entries tendered had no connection with the bail bonds, but contained a number of incriminating statements.

The entries were then read by the Bench Clerk, and the entry (K) was admitted and marked E in the Court.

Witness continued.—About half an hour after the three accused Parmeshwar, Ramnath, Rajmun came back accompanied by their three bailors (zamindars). Parmeshwar, Ramnath and Rajmun came to me and said "the cows will not be allowed to leave. It would be better if you get the butchers to accept a price for the cattle and make the cows over to us. The *sadhu logue* have not eaten for three days." I tried to pacify them, and said that the sahibs would come to-morrow morning, and if the sahibs agreed the butchers might be induced to give up the cattle. At this they were annoyed and went away, saying *Accha, humlogue jata hai* (all right, we are going).

This incident was also entered in the station diary after they left. It was written in my presence, and, as far as I can remember, Alli Akbar made the entry. This (shows) is the entry I refer to. It bears my signature and also Alli Akbar's.

Mr. Sutherland.—I tender it.

Mr. Garth.—What I want to place before the assessors is that he was looking at this, and he gives the exact words.

The Judge.—You cannot assume that because he was looking at it he read it. It is my opinion he was not reading. It is not an easy thing to read, and even my clerks will find considerable difficulty in doing so.

Mr. Garth.—Of course I have the right to comment on it.

The Judge.—You can comment on what you like. It is for the Court and assessors to see if he read it.

Witness in further examination said.—I was doubtful of the safety of the cattle. I feared that they intended to do something, so I gave orders to the head-constable and the guards to bring the cattle inside the police compound thana. This was also entered in the station diary in my presence by the head-constable Alli Akbar. All this was entered at one time.

Mr. Sutherland tendered the entry, which was admitted and marked F.

The Court then rose for the day.

The 1st December 1893.

THE hearing of this case was resumed this morning (December 1st by Mr. H. W. Gordon, C.S., Sessions Judge of Chapra. The Court was quite as crowded as yesterday.

The examination by Mr. Sutherland of Babu Gyatri Prosunno Ghosal, Inspector of Police, Chapra, was continued. He said the order I gave to bring the cattle into the thana compound was carried out. I kept the cattle in the thana enclosure, and had the fact entered in the station diary. It was recorded in my presence by Alli Akbar. This (shows) is it.

Mr. Sutherland.—I tender it.

Witness.—When the cattle were brought into the thana I made arrangements to guard the cattle.

Mr. Garth.—I would ask you to note that before he gave the last answer he read the entry.

Mr. Sutherland.—No, he did not.

Witness.—How could I read the entry?

The Judge.—He could not have read the entry: he only looked at the book. I will note if you like, "he looked at the book and said this is the entry."

Witness.—I also wrote a letter, and whilst I was in the act of writing I heard a *hulla.* I heard the voices of a number of men collected on the road to the south of the thana. I looked out of the kota in which I was and saw the crowd. Whilst all these matters were transpiring I ordered the entry to be made.

Mr. Sutherland.—I ask that the entry be read out.

Mr. Garth.—Before that is done I call attention to the witness's statement that this entry was made at the very time when the cattle were ordered in.

The Judge read the deposition as recorded, and Mr. Garth was satisfied.

(The entry was then tendered and marked G.)

Witness.—The writing of the entry was completed at about 6-30 A.M. After that we saw a very large crowd coming along from the south of the thana armed with *lathis.* Then I ordered the policemen to put on their uniforms. I mean the armed guard who came to Bassantpur as well as the local police. The guard police were specially sent on the 4th from there to Bassantpur to protect the cattle and arrived there before I did. I ordered all the policemen there, including the guard police, to put on their uniforms and equip themselves with their guns and other instruments (*hathiar*). Whilst they were putting on their uniforms, the advance crowd reached the front of the thana. Myself, the head constable, and sub-inspector came down and stood at the thana gate which faces north. Here I posted the guard and advanced and remonstrated with the rioters. (Mr. Garth objected to the witness assuming that they were rioters, and said that the police in this country always assumed a crime.) I recognised the three men in the crowd who had been that very day—Parmeshwar, Ramnath and Rajmun. I addressed the first two men in particular, and said to them, "You are gentlemen and zamindars, and it does not behove men of your position to do this. Please disperse." I remonstrated with them. They replied—"Release the cows." I then said "I cannot do so. I have no authority or power to do so. To-morrow morning early the authorities (*hakim logue*) will be here, and whatever they decide upon doing will be done." While all this conversation was going on between me and these men, the rest of the mob were shouting and jumping about and brandishing their *lathis.* They were shouting *Pohari Baba ke jai, Mohabir jee ka jai, Kali jee ka jai, gye'dey do.* The head constable and other

police officers were also remonstrating with the mob (*sumjatha tha*). The people would not listen. No one would listen, and with the cry of *mar mar* they pressed on towards us. They came up with the line of the guard. When they rushed forward we fell back on the line of constables. Then the mob came abreast of the constables, and one of the rioters struck Birda Singh, constable, a blow with a stick. I was present and saw the occurrence. The one who struck the blow is Mutki Singh (identifies him).

Mr. Garth.—The man's name is Mutki Rai. I shall comment on this.

Witness.—After striking the blow he fell back into the crowd. I then retreated with my guard and ordered them to fire "sulki" or blank cartridge. They fired in the air according to my direction. This did not have the desired effect. They did not care and again rushed crying *maro, maro! looto! looto!* I made the guard recede again and ordered another round of blank cartridge. They fired a second time, but it did not stop them, and they began to shout (*Paila police ko maro, thana loot loo, aur gye ley chullo.*) (First thrash the police, loot the thana, and take the cows away.) They rushed on and I ordered the guard to "*golee maro.*" The guard fired at the mob. The noise ceased immediately and the crowd dispersed. When running away they said "*aj tum log ka jan bacha, kal tum log ko dakhengi.*" (To-day you have escaped, but to-morrow we will see how you will fare.)

We followed them a little distance. After Mutki struck the constable and fell back into the crowd, I did not again see the three men—Ramnath, Parmeshwar and Rajmun. Besides these three and Mutki, I also recognised Khedu, who is present here (identifies him). I also recognised Hargobind Burhi, Kuldeep Roy, and Goodur Kandu who are not present. With the exception of the three men whom I had seen during that day, I did not know the others. I came to know the others when I was remonstrating with the mob. Mutki Roy I came to know when he struck the constable Birda Singh. The others whom I have mentioned were men whom I observed jumping about and brandishing their *lathis*. After following the rioters a little distance we returned and kept a strict guard on the thana all night, and sent a letter to the Superintendent and to the Joint-Magistrate. I also initiated these proceedings, and dictated the first information and the head constable Alli Akbar wrote. This (shown) is my first information in the case just referred to.

Mr. Sutherland.—I tender it (admitted and marked H).

Mr. Garth asked whether there was a translation.

The Judge.—There is not, but I will have it translated for you by to-morrow if you like. These exhibits will all have to be read to the assessors.

Witness continued.—The next morning, the District Superintendent of Police, the Joint-Magistrate, and several other sahibs (the Bihar Light Horse) arrived. Mutki Roy, who struck Birda Singh, was found in my presence. I arrested him in his village Murha on the 9th of September. When I arrested him he had wounds on his body. I placed him before the Magistrate at Bassantpur. Khedu was not *challaned* by me. The head-constable brought him to me at the Bassantpur thana early on the 7th of September. He had gun-shot wounds all over his body. The Magistrate ordered me to send him to the hospital at Saran, and I carried out his directions. I did not *challan* Jowahir Lall. I mentioned the name of Hurgobind Burhi and others, and I also saw a man called Dudraj Burhi who, as far as I know, is the other Burhi's brother. Before the occurrence I did not know Dudraj Burhi; but I saw him there amongst the crowd when I was first remonstrating with the mob. I next saw Dudraj on the 9th of September at his *basti* in Murha at about 2 P.M. He also had wounds on his body. He was brought before the Joint-Magistrate at Bassantpur on the same day between four and five o'clock. I do not know what orders were passed in respect to this man

At this stage Mr. Sutherland informed the Court that the man who drew the plan of the scene of occurrence was present, and requested leave to examine him as an interposing witness. He was also prepared to leave it to Mr. Garth to examine the Police Inspector on the map on the guarantee that it would be put in. He would accept either alternative.

Mr. Garth.—I do not want this man (the police inspector) to go out of the box.

Mr. Sutherland.—I do not want him to leave the box either. He can step behind.

Mr. Garth.—I should not say so if I did not believe there was some communication going on between the persons here and the witnesses outside who are informed of every answer. If this was not so, I would not care.

Mr. Sutherland.—I do not think things are as you say, but for your satisfaction I should be glad to do anything to relieve your mind. I will see if it is not possible to put the witnesses somewhere where they cannot be communicated with.

Mr. R. B. Ghose.—If they are placed under the care of the nazir there will be some security, as he is not connected with the police in any way.

The Judge called for the nazir and satisfactory arrangements were made.

Maulvi Waliulla called by Mr. Sutherland, examined, said.—I am Income-tax Assessor since the 16th November. Before that I was *kanungo* in this cutchery. This map was drawn by me on the scale of 100 feet to the inch.

Mr. Sutherland.—I tender it.

Mr. Garth.—I submit that this man is only a *kanungo*, whatever that may mean. He has not shown any capacity.

The Judge.—Is it necessary to prove his capacity? You may comment on that afterwards.

Mr. Garth.—He has not the education to make a map.

Mr. Sutherland.—He has made the map and he swears to it.

(The map was admitted and marked.)

The witness in further examination explained the details of the map and gave the distances from point to point and several other particulars which were not fully shown on the plan.

In cross-examination to Mr. Garth he said.—The Collector sent me an order to go to Bassantpur. When I got to the thana there were many people there. Gyatri Babu, who is behind me, was there, but he never told me what to do, and he had nothing to do with my work or the measurements I made. I spoke to him there many times. I put up at the *dehra* (house) of the Sub-Registrar which is shown on the map. I do not know if he is a witness in this case, but he is the Sub-Registrar of Bassantpur. I knew him for some time previously and the police did not tell me to put up those. I am qualified to make maps; it is a part of the work of a *kanungo*. I am a passed surveyor. I learnt geometrical drawing. I made these measurements with a prismatic compass. The thana is near the bazar, and not in the "heart of the bazar." The Collector told me to stop at this point, and not to show houses that were beyond the roads. This map does not show all the houses in the bazar at Bassantpur. I have done work in connection with taking census. I cannot say what the population of Bassantpur is. The thana has no gate (*phattuck*), but the opening is on the road. I saw no wooden gate there; there is only a gateway which opens right on to the road. There are no other houses on the north of the road which have been omitted; on the west there are some which are not shown on the map. The red mark shows the two-storeyed house in the thana. It is the outside measurement and includes the verandah. The building has one hall and two rooms downstairs and the same above. I cannot give by *andaj* (approximately) the dimensions of the hall or the rooms. The hall is bigger than the rooms. There is also a verandah on each of the floors.

(Handing the witness a pice of paper).—Can you draw me a plan of the building (approximately) of the ground floor and the upper floor? Yes (after a minute). Here it is. This is the entrance.

Here is a one-inch scale, give me the dimension of the thana? North to south it is 29 feet, and east and west it is 48½ feet. This verandah faces north towards the *phattuck*. I cannot say even approximately what the dimensions of the verandah are.

Mr. Garth.—I tender this plan of the building made by the witness (accepted and marked).

Witness.—There is a road to the west of the thana going south. Whatever there is on the side of the road I have put down on the map. On either side of it there is nothing but fields. When I made this map the bushes of reeds had all been cut. I made the map on the 22nd of September. Nobody told me that it was cut, but I saw with my own eyes. They were cutting and setting fire. I saw the roots myself. I cannot say whether September is the usual time for cutting the *kagra* (reeds). Reeds are cut generally every year. Before cutting it, it grows to the height of a man, three or four feet. I never took particular

notice when reeds were being cut. I am a zamindar myself, and have cultivations. On the south of the thana, where I have left a blank, are fields of *makai*, *murua*, *saman*. When I made the map the *makai* had been cut. I saw the roots and stubble. I had no conversation with Gyatri regarding all this, but we talked on other subjects. The *makai* also grows to the height of a man, four or five feet; it is possible for it to grow higher. From the verandah of the upper storey of the thana you cannot see anything on the south, because it is blocked up on that side. From the centre room (hall) a person could see people coming from the south, even if there were *makai* and bushes standing. The upper storey is about twenty feet high, from the ground to the roof (approximately.) If a person was standing six or seven feet above the ground he could see people coming, in spite of the *makai* and bushes, if any were there.

Re-examined by Mr. Sutherland.—The building in the thana has a flat beaten terrace or roof. There is a place or opening in the roof by which you can get there, but I saw no *pucca* ladder.

This concluded this witness.

In further examination by Mr. Sutherland, Babu Gyatri Prosunno Ghosal said:—(Looking at the map.) These three men—Parmeshwar, Ramnath and Rajmun—were standing here (shows). When I first recognised them they were in the centre of the road near the entrance. I was within the gateway when I gave the last order to fire on the mob, and the guard was on a line with me, between the thana building and the inner part of the gate, not quite midway. The thana is enclosed by a wall a little higher than me, about 5½ feet high. On the day of the riot there was no door at the thana gateway.

Cross-examined by Mr. Garth.—I will not be able to understand every word you say in English.

The witness, after answering Mr. Garth's first question in English, asked to be allowed to be examined in the vernacular.

Mr. Garth.—The absurdity of the request lies in the fact that he was questioned and answered in English in both Courts.

The Judge.—But he has stated that he cannot understand everything that is said. It may be that he has been examined in English in both Courts, but if we are to be met every time by his answering that he does not understand, it will cause a great and unnecessary waste of time.

Mr. Garth.—When a question is put, and he swears that he does not understand, it may be translated to him.

The Judge.—How can we go into that question? I cannot go into that question every time. I think it would be much better to examine him in the vernacular. He has stated that he cannot understand every word.

Mr. Garth.—He is a Bengali, and he is is being examined in Hindustani. Both English and Hindustani are foreign to him. It is not the same as if it was his own language he was being examined in.

The Judge.—That does not matter. It is the vernacular of the Court. English is not the language of the Court, and if he objects to be examined in English, I do not see what is to be done. I am very sorry for you, but how can we help it?

The cross-examination of the witness was conducted in Hindustani. I do not know that there has recently been an enquiry into my conduct. I do not now that a special officer came down here from the Inspector-General in regard to a case of mine. Lately or recently I have not alleged that I was beaten, not within the last six or seven months, not within the year. I do not know that any "Inspector Khurshaid" came here. I have no personal knowledge of the coming here of any police officer of that name. I have heard of a police officer of that name coming here. I cannot remember from whom I have heard this. I heard that he came to measure the convicts. He may have come from the office of the Inspector-General, but I cannot say exactly where he came from. I cannot say exactly whether he made enquiries into my case of my being beaten. There was a case in which I was beaten. I was complainant in that case. I do not remember what I stated in that case. This was many months ago. I do not remember exactly how long ago, although I was complainant. I investigated that case, and other officers also enquired into it, but I cannot say if Khurshaid had anything to do with it. In that case there was no result, as no clue (*putta nishan*) could be found of the accused. I did not name anyone

as defendant, and I did not say they (the defendants) were people of Saven. I did not describe the defendants as people of any particular place. I am not aware of any report being forwarded to the Inspector-General's Office in regard to that case. I do not know that there was a report from the Inspector-General's Office in which my conduct was characterised as "dishonest," nor have I heard so. I have never heard of any such report before this. To my knowledge no such report has ever come from the Inspector-General's Office, nor have I heard of any report of any kind about that case. I do not know how long Khurshaid was here. I do not recollect having met Khurshaid. I cannot say if he is in the police or not at present; when he came here he was; must have been. He came to measure the convicts. He did not come to the inspector. In connection with this matter he would not have to come to the inspector, but the District Superintendent, whoever he may be. I think Mr. Boileau was the District Superintendent at the time. I do not know whether Mr. Boileau knows what he (Khurshaid) came for. I cannot say exactly whether my own District Superintendent made any enquiries into my case. Mr. Boileau was my District Superintendent during my case, as far as I can recollect. At that time either Mr. Boileau or Mr. Graham was District Superintendent, and I do not know whether either of them enquired into the case.

I attach importance to that case, and I am yet endeavouring to find the persons. The papers relating to my case are not in my office. No papers remain in my office. It is not usual for papers in a case I am investigating to remain in my office. I do not know where the papers in my own case are. They are where they ought to be in the office of the District Superintendent. I shall not be able to bring them here because I have no authority to do so.

Mr. Garth.—I will ask for a summons at this stage of the case against Mr. Boileau, District Superintendent of Police, for the purpose of producing the papers in connection with this case.

Mr. Sutherland.—I object under section 153. All this is for the purpose of shaking his credibility and damaging his character. This is all in connection with quite another matter, and these papers cannot be used here to contradict the witness. If he is swearing falsely he can be prosecuted. After some further discussion, the learned Judge said—There is no necessity for so much warmth Mr. Garth. There are many questions and things to which you have objected, and there are also some to which Mr. Sutherland has objected. I do not wish to refuse an application of this kind, and if you put in a proper application, clearly describing the papers you require, I will consider it. As to their admissibility I cannot say anything now.

Witness.—I cannot describe the papers in my case without seeing them. When the District Superintendent goes out of the place the office is left in my charge. I do not remember the month in which I made the complaint, perhaps April, May or June.

I have been for about thirteen years in the police. I am to some extent aware of the custom and manners of the people of this district. I have heard that Ramnath and Rajmun are *Telis*. There may be a doubt about this. I did not enquire into this case. I enquired about these three people in the Bala case. I learnt during that enquiry from other people that they are *Telis*. I came to the conclusion that they were respectable and rich.

Is it customary for *Telis* to get on horseback and head unlawful assemblies?

Mr. Sutherland objected to the question, which was afterwards put differently and the witness replied.—It is a common thing for *Telis* to ride on horseback. Persons who have the means may ride on horseback at the head of a riotous mob. It is not a common thing for *Telis* to head a riotous mob on horseback. Before this I have never seen a *Teli* head a riot on horseback. As far as I know no one is peaceable in Bihar. The *Telis* are not, as far as I know, a peaceable people. I have never come across any case in which the *Telis* have been riotous. I enquired for a day-and-a-half into the Bala case, from noon of the 5th to the evening of the 6th. The Sub-Inspector Khyrat Ali and Inspector Abdul Halim also enquired into the case as well as the Superintendent himself. I first received information of the Bala occurrence on the 4th of September. On that date I had not before me the statement of any witnesses, and not on the 5th either. I cannot say when the first information in the Bala case was taken. I was not present, and I cannot tell what happened. The statements of certain witnesses in the Bala case were taken before me.

The statements of other witnesses may have been taken before that, or may not have been taken. I do not know whether they were or not. When I

arrived there I did not ask whether the statements of any witnesses had already been taken. As investigating officer it would have been a part of my duty to ascertain all this if I was the full enquiring officer. The head investigating officer was the Superintendent on that day. I went there with him. He did not in my presence ask whether the statements of any witnesses had been taken already. It would have been the duty of any officer to place before the investigating officer any depositions already recorded, if he asked for them. It would not be his duty to produce them unless he was asked for them. It would be his duty to lay before the officer all the information he had obtained about the case, but it would not be necessary to put before him the statements of witnesses. The statement of the full facts of the cases, but it is not necessary to put before him the statements of witnesses.

By "all information" I include the statements of witnesses, but he would not have to read the depositions to the investigating officer. The Superintendent, Mr. Boileau, arrived shortly before me, slightly in advance of me. No one told me whether or not witnesses had been examined, but I have ascertained since that some witnesses were examined before my arrival. I do not remember which of them were examined before my arrival. From the police record I will be able to tell you all this. Without consulting the record I cannot say how many were examined before my arrival. There are papers in existence which will show who were examined prior to my arrival. They must be with the enquiring officers, who will best be able to tell where the papers are. The investigating officer is Kassim Ali, Inspector, who may be at Sonepur. He is not the Inspector of Sonepur, but he is on duty there. The practice is that he keeps the papers with him if they are important, otherwise he puts them in the office. If he is transferred he makes over the papers to the relieving officer, or sends them into the thana.

The Judge.—You had better call upon the District Superintendent, who, if he has not got the papers himself, will find them; perhaps we had better stop at this stage.

Mr. Garth then put in a petition calling upon the District Superintendent to produce the papers in connection with the case in which Babu Gyatri Prosunno Ghosal complained against certain persons of having beaten him. The petition also required the production of the depositions of the witnesses, if any, who were examined before the arrival of the witness Gyatri Prosonno Ghosal at Bassantpur.

The learned Judge passed the necessary order for the production of these documents to-morrow morning.

The Court then adjourned for the day.

The 2nd December 1893.

The further trial of this case was resumed to-day. (December 2nd) before H. W. Gordon, Esq., C.S., District and Sessions Judge of Sarun. Native interest in this case continues unabated if one might judge by the increasing crowds who thronged the Court and swarmed in the verandahs and in the compound.

On His Honour taking his seat, Mr. Garth, counsel for the defence, enquired if the papers and documents for the production of which he had applied yesterday had arrived. He was informed by the Court that they had not, but that as soon as they did he would be allowed an opportunity of looking at them.

The witness.—Babu Gyatri Prosunno Ghosal, Police Inspector of Chapra, whose cross-examination had not concluded yesterday, was put into the box, and in further cross-examination by Mr. Garth, said:—I have stated all that occurred at the identification of these men by the butchers at Basantpur. The Tanna in this case is the same Khakkan *alias* Tanna who was examined in the Bala case. I only issued and served summonses in the Bala case on the 5th of September. I did nothing further. This was done under orders of the District Superintendent. The first information was not placed before the District Superintendent in my presence. I know now that the Sub-Inspector had told the District Superintendent all the facts of the case.

What are the facts which were then placed before the District Superintendent? The Court disallowed the question on the ground that whatever reply the witness gave must be from hearsay.

Witness.—On the 5th of September I did not see the first information in the Bala case at all. I have seen it since. I first saw it on the 4th of September at Chapra. It was not sent to me, but to the District Superintendent. I read it, but I do not know whether the District Superintendent also read it. I received it from the head muharrir. The muharrir did not say how he got it. He brought it to me. I cannot say who sent it. I did not think it came from a man in the street. I did not form any opinion as to the source from which it came. The papers were, I think, all with the Sub-Inspector when I was at Basantpur on the 5th in the room with the District Superintendent, but I cannot say exactly. I was with him on that occasion for two or three minutes. I swear it was not more. I was in front of the thana, and the Saheb was in his tum-tum. I was with the Superintendent in a room in the Nuggua Factory on that day. While I was there with him no business was in my presence transacted in reference to the Bala case. The District Superintendent stayed during the night of the 5th at the Nuggua Factory. I only saw the District Superintendent for two or three minutes at Basantpur on that day. After I had seen him he drove away, and I did not see him again that day at Basantpur. It was during those two or three minutes that he gave me the orders to issue the summonses. He gave me the names of certain persons, and ordered me to issue summonses on them. He read the names out to me from a document which he had in his hand. I know that it was some confidential report, but I cannot say what the contents were. I cannot exactly say whose report it was. It might, perhaps, have been the report of the Sub-Inspector Khyrat Ali.

Mr. Garth.—You were the investigating officer on that day. Can you state what information it was upon which the summonses were issued?

Mr. Sutherland.—I object to that question. How can he say what the Sub-Inspector's sources of information were?

Mr. Garth.—I submit that he as investigating officer must know. It is a matter of the highest importance to us, especially after the opening in this case, or else I would drop the question. I earnestly submit that I have the right to ask what the grounds on which the summonses were issued were.

Mr. Sutherland.—The witness has already stated: "I cannot say exactly whose report it was. It was, perhaps, Khyrat Ali's." Assuming that it was a confidential report, and it was Khyrat Ali's, how can my friend ask this witness what the sources were upon which the summonses are issued.

Mr. Garth.—I wish to ask this question because it is of vital importance. He has already stated that when an investigating officer arrived and took over charge of the case out of the hands of the man who had been previously investigating the case, it was customary to hand over to the investigating officer who arrived all the papers in the case he comes to investigate. This man was the investigating officer who came to take charge of the case, and he says that he is unable to say what there was to support the case, although he is aware that the whole of the papers must be handed over to the investigating officer when he assumes charge. I submit that it is absurd that he should not know what was supporting the case, and I put it before you that no man of common sense could doubt that this man knew.

The Judge.—I have said several times that you must not comment upon the case at this stage of it. I do not wish to exclude any evidence which is of the slightest relevancy, but while a witness is under cross-examination, I do not think it is right to comment in this way.

Mr. Garth.—Then I would ask you to rule that it is an improper question, and that it is unlikely that this man should have known.

Mr. Sutherland.—The only question is, is it a relevant question?

After some further discussion His Honour said:—I hold that it is not a relevant question and cannot be allowed. I think Khyrat Ali is going to be called, and he is the proper officer to put this question to.

Witness continued.—In the course of my investigation of that case, I never saw the confidential report alluded to.

Mr. Garth.—Then may I take it that when you issued those summonses, you did not know the grounds upon which you issued them, but that you acted blindly under the orders of the District Superintendent of Police without knowing the grounds upon which these men were summoned?

Yes, these summonses were issued for the purpose of investigating the Bala case, and these men were summoned because their names were entered in the station diary. At the time the summonses were issued I had no reason to know that they had been guilty of any offence. These (handed to him by Mr. Garth) are the summonses I issued them.

Mr. Garth.—I tender them. They are in the case of the Empress *versus* Persons unknown. I ask that they be read. (Documents read).

Witness to Mr. Garth.—These are against Ramnath and Rajmun. A similar form was issued against Parmeshwar (admitted and about to be marked J and K.)

Mr. Garth.—I apprehend that Mr. Sutherland may contend that he has a reply because I put these documents in, and if he will, I do not intend to put them in. They are not of such importance that I would be willing to lose my last word for them.

Mr. Sutherland.—I must rely upon the Calcutta High Court rulings in regard to this.

Mr. Garth cited a case from 10 Calcutta as showing that the putting in of a document by him did not entitle Mr. Sutherland to a right of reply, and he also referred to a case in 14 Calcutta which followed the former ruling. There were, however, he informed the Court, one or two cases to the contrary.

The Judge.—This is a ruling in your favour (referring to the case in 10 Calcutta). That seems to be in accordance with section 292, Criminal Procedure Code.

Mr Sutherland.—There may be other later Calcutta rulings contrary to this.

The Judge.—I can go on either if they are conflicting, and if the later rulings do not override the others, I think the section is in Mr. Garth's favour.

The documents were ultimately admitted subject to any future argument on that point.

Witness in further cross-examination to Mr. Garth.—These people lived rather more than three miles from Basantpur; about six or seven miles. I cannot remember exactly at what time the summonses were issued, but as far as I recollect it was in the afternoon. I do not remember if they were served that evening They could have been served the same night Ordinarily they would have been served the same night, and ordinarily the summoned persons would have attended the next day. The next day they attended, but I was not at the thana and cannot say if they attended in the morning. I cannot say if they arrived in the morning. In the morning I was at the dâk bungalow with the District Superintendent, who arrivad at about 7A.M. The enquiries he made into the case were made at the bungalow and not at the thana. Those who were required for the purposes of the enquiry ought to have come to the bungalow, but I did not see any of those who were summoned there. Others who were required for the enquiry were present at the bungalow. I cannot say whether the persons who were summoned came to the bungalow or not, and I did not see them The District Superintendent took the evidence of the witnesses at the bungalow. I do not remember the names. I can mention one or two. Nathu was one, and perhaps Tanna. Some others were also examined, but I cannot give their names. The District Superintendent remained there at the bungalow till about 11 o'clock. Hazir Ali was there, but came after me, shortly before Mr. Boileau left. Hazir Ali did not, as far as I remember, come in with a list of names.

When I put the question to you just now, why did you ask me what names? I wished to know in connection with what case. He may have brought a list of names in connection with the Bala case. I cannot swear whether he did or did not bring a list of names to Mr. Boileau. Before Mr. Boileau left he gave me no orders to take anyone to the thana and take their statements. Statements were recorded at the thana on that day. When I left the bungalow I did not tell anyone there to go and get their meals and come to the thana afterwards. I cannot say without looking at my deposition whether in the Bala case I told the Magistrate that 10 or 12 persons besides the accused were present at the identification. (Deposition shown.) This is what I said then.

Which is true; 10 or 12 as you then said, or 20 or 30 as you now say? Both are true. I spoke approximately. Tanna was not examined in the Bala case before me.

Mr. Garth.—Can you tell me what evidence he gave in the Bala case in regard to the identification of Parmeshwar, Ramnath and Rajmun at the Thana?

Mr. Sutherland.—I object. If he knows, which is very doubtful, he could only have heard. Hearsay evidence is nothing.

Mr. Garth.—I submit that it is relevant. I am going to show that it is of the utmost importance.

The Judge.—Hearsay evidence, as you know, is never admissible. If you can satisfy me I will take it down. It is a question which I never allow in the mufassal, but I am quite willing to admit if you can satisfy me.

Mr. Sutherland.—You are not allowed to find out the state of a man's mind.

Mr. Garth.—I have to explain the relevancy of this in the witness's presence; it will be useless to continue the discussion.

Ultimately the question was allowed to be put, and the witness answered. I have not heard what evidence Tanna gave in the Bala case.

Mr. Garth.—Was it in consequence of what he said in the Bala case that he was not called in this case?—No.

Mr. Garth.—That is where the relevancy comes in.

The Judge.—I want to know in what way you propose to make this relevant.

Mr. Garth.—I submit that the question of whether the man has heard or not may be of the utmost relevancy.

Witness continued.—I cannot say whether it was on account of what Tanna said in the Bala case that he was not called in this case. I do not know the reason why Tanna was not called as a witness in this case.

Mr. Garth.—The next question I propose to ask is: Have you not heard that in the Bala case this is what Tanna said (reads a few words).

Mr. Sutherland.—I must object. I submit that when a man has sworn, whether falsely or not, that he does not know what a certain man stated in his evidence in a certain case, you cannot ask him whether it was not in consequence of what he stated then that he was not called in another case, much less whether that man did not say so and so. This is indirectly bringing into the evidence in this case whatever Tanna may have stated in that case.

The Judge.—I do not think I ought to allow the question.

Mr. Garth.—I submit that what Tanna said is so striking that the witness will probably remember that he has heard it. I have not concluded my question, and I cannot see how your Honour proposes to adjudicate upon the admissibility of a question which is not yet finished. The question I want to put is—

Mr. Sutherland.—But the mischief will have been done. Before the witness is asked the question the assessors will have heard it.

The Judge.—I don't think it is admissible Mr. Garth.

Mr. Garth—I submit I am at liberty to ask whether he has not heard that the witness said so and so. It is frequently done. It is possible that a perfectly honest witness may have forgotten a thing till it has been brought back to his recollection.

The Judge.—I will allow the question subject to Mr. Sutherland's objection.

Mr. Garth—Have you not heard that this is what Tanna said in the Bala case?

Mr. Sutherland.—Your Honour will see that there is another objection to that. This is a statement which has been made in another Court, and now it is being put in here. One of the objects is to contradict this witness as to the identification, but indirectly its effect is to introduce the whole of that evidence into this record.

The Judge.—I cannot allow any part of this to go into the record.

Mr. Sutherland.—But that is the effect to the question. I do not say that my friend is trying to get this in, but indirectly it will undoubtedly have that effect.

Mr. Garth.—So far from desiring to do anything indirectly, I say that the prosecution are keeping back a witness in this case, because they know what he

has already said, and that he will again speak the truth, and I say that they have no right to keep back this witness.

The Judge.—It may be so, and if it is, it will afford you a strong point for comment; but this is not the time for comment. I do not think that this question can be put.

Mr. Garth.—Very well. I hope that this will bring back to this man's recollection what Tanna said, and that it was in consequence of what he said that he was not called.

In further cross-examination the witness said—At the identification of these men at the thana, I say approximately 15 or 16 men were present. I will pledge myself that there were more than ten and less than twenty people present at the identification. When I released these people on that day on bail, I considered them guilty of rioting under sections 143 and 147. I did not think at the time that any deadly weapons had been used. I did think that the object of the people was to dishonestly take away the cattle. I did not understand the offence to be dacoity, but considered it only rioting. The only reason was that I came to this conclusion, this was how I understood the affair. It would depend upon circumstances whether, if two ro three people on horse-back led a mob who took away cattle, the case would be one of dacoity or rioting only. The circumstances of the case which at that time came to my knowledge were such as to justify me to release these men on bail for Rs. 100 each.

The facts which led me to take so lenient a view of the case are in the record. I understood it to be a light case at the time. I cannot, without referring to the records, give all the reasons which led me to treat this case as one of rioting and not of dacoity at that time. The 6th of September was market day at Basantpur, and large numbers attended it; but I cannot say whether the unusual fact of the cattle being there in the grove created any sensation or excitement. One cannot tell in one day regarding the views of the people in any place, and I had been there only one day. I was engaged in other work, but if I was not, it would be my duty to see what was going on around me. On Wednesday, the 6th, I did not go to the Registry Office at all. I did not see the Registrar on that day. I do not know whether he was there on that day. The Registry Office is not close to the thana, but about 200 yards away from it. I knew the Registrar since the case. I did not know him before. I cannot say whether the head-constable or Sub-Inspector went there or not. The Registrar is a Muhammadan gentleman. I cannot say that there were several Muhammadans in Basantpur that day. I did not concern myself to see if there were crowds of Muhammadans. Before the afternoon I had no idea that there would be a riot. I had not the slightest element of fear that there would be a disturbance. I did not know at the time that there was considerable feeling among the Hindus and Muhammadans of this district. I have heard of this sort of feeling in other districts. To my knowledge there was no manifestation of this feeling till the 31st of August. I did not think there was any likelihood of a riot of this kind. I did not think there was a likelihood of a riot on the 6th, having regard to the occurrences which took place at Bala. There was already a guard before this to protect the cows, and I did not think it necessary on the 6th to take any particular steps to provide against any riot. The guard was there to provide against a row. The person who sends a guard is the best person to know whether a riot or row was considered probable. The District Superintendent's opinion is superior to mine. Whatever my opinion is, it is insignificant as compared to that of the District Superintendent. On that day there was not, in my opinion, any likelihood of a row. I took bail from these people, and I considered the bailors to be respectable people.

Can you give any idea into what area you can press 4,000 men? I cannot say by *andaz*. There were between 3,000 and 4,000 present. I did not count them. They were not in one place. They were in front of the thana, and on the other two sides. I saw those who were in front and heard the noise made by the people on the two sides. There were about 2,000 or 2,500 people in front of the thana. I saw them from the thana gate. (Looking at the map) I was here (marks the place). The 2,500 people I saw were along here (marks). There were no rioters on my right when I first saw them. None of them were

on the right or left. From where I stood I could see along the right and left of the road. There was the thana building on my right. I was facing north. There was no obstruction here (where Mr. Garth had made a mark), and I add that all this only refers to the first time when I saw the people. The noise I heard was on the east and west. When I first saw them they were coming from the south, and afterwards they came from all directions. I did not keep watch from which side people came afterwards. It was a very serious matter, and I had lots of things to do; judging from the noise, these people came from the south. At first I saw them coming from the south as I have already said, when I was in the upper story of the thana building. I saw people also coming from the east, when I was persuading the mob to disperse and remonstrating with Parmeshwar Singh and the others. This was when I was standing outside in the place I have marked. What I have said about there being no one on my east had reference to what I saw when I first saw the mob.

At this stage the Court adjourned for a quarter of an hour.

I did not remonstrate with the mob from the place marked by me on the map, this being the spot where I first came down from the thana building and went to and stationed the guard. Afterwards I went forward and remonstrated with the mob. Then the people were all along on both sides, east and west. They were not there then at first, but when I went forward to remonstrate, the mob had increased in number and came on all sides.

At first they were not on the east. When I first spoke to these three men they were facing south with the mob behind them, and on both sides close (sticking) to them. The crowd were pressing on all sides of the gate. It was under these circumstances that I saw the people coming from the east. I cannot say to what class these belonged. I saw them coming from the east. I did not see people coming from any other direction. I first saw the crowd coming from the south at quarter to six or seven. Between that time and the dispersing of the crowd it was about half an hour; it could not have been more than three-quarters. It was about twenty minutes from the time I first saw the crowd coming till I began to remonstrate with them. The speeches lasted about half an hour. From the end of the speeches to the "killing" of the people it was about ten or fifteen minutes. I am only giving the time by *andaz*. The whole thing may have occupied three-quarters of an hour or one hour. That was not a moment to take notes of time. It was a matter of life and death. I do not remember if more was done than I have already stated by way of remonstrance. Not only I, but also my subordinates remonstrated. I am prepared to swear that we remonstrated for certainly more than ten minutes. The people were excited during the half hour we were remonstrating with them. The armed guard were drawn up in front of the opening (the gateway) and extended all along the opening, but did not go beyond it. The opening is about three yards, and the guard consisted, I think, of eight men and one head-constable. Besides the round fired by the guard, myself and the head-constables also fired the revolvers with which we were armed at the time. I have not stated this before, because I was not asked that question particularly. I do not remember having been asked anything in regard to that matter. Our revolvers were loaded with bullets. The head-constable of the guard had no gun. The eight men of the guard had a gun apiece, and myself and the head-constable had our revolvers. As far as I know there were no more firearms used. I do not know that two men were killed by that discharge. I only saw two men fall wounded, but whether they died or not I cannot tell. Five men were wounded, but I cannot say for certain that this does or does not include the other two men of whom I spoke just now. At the time of the firing I saw only two men fall. When I saw five people were hurt I meant that we came to know this afterwards. I did not say that five in all were hurt. Besides Birda Singh, another constable was hurt, but there were no marks on this man. I have not, as far as I can recollect, mentioned this before in this Court, but I think I said this before the Committing Magistrate (after looking at his deposition in the lower Court). I do not find any mention of the fact in it. In my deposition I stated what I saw only. This second man, who was struck also, has not been called. I cannot tell where this man is at present; he may be at the Basantpur thana or at any other place. After putting on my uniform I went down at once. When I got to the gate of the thana the mob

had come up. From that time to the dispersion of the mob we were there retreating every time a rush was made. Not once during that time did I ever go inside the thana building. After they dispersed we followed them for two or three minutes. Just before I first saw the crowd I was writing a letter to the Superintendent informing him of what was being done. After we returned to the thana we wrote the first information. We came back to the thana after following them for about two or three minutes after the scattering of the mob because we were frightened. We had only one round of cartridges loaded with buckshot left. This was all we had for the rifles, but I had some cartridges for my revolver. There were in all ten cartridges loaded with buckshot and seven cartridges for the revolvers, when the mob had fled. The reason we were afraid was that the thana might be attacked from another quarter. I ordered the cows to be driven into the thana compound about 5-30 P.M. as soon as these people had gone away. I am certain it was not 6 o'clock. I cannot say if people were then about in the bazar and in the streets. I did not see any. It was not a time in which people would ordinarily be about in the streets, though two or four might. When I sent for the cows, or a little before, I was not told that there was a crowd in the street. When I gave that order I thought the street would be practically empty or comparatively empty. If people were in the bazar they would, of course, see the cows being driven into the thana. If there were people excited in the cow question, they would not have their excitement increased by the cows being taken into the thana unless they had the intention of releasing the cattle.

Tell me the exact conversation between yourself and these accused with respect to the purchase of the cows? They first came and said when they came to give their bail bonds,—"the cattle will not be allowed to go. It would be better if you get the butchers to accept a price and have the cattle made over to us. The *Sadhu logue* have not eaten for three days." On that I said "tomorrow the authorities will arrive. If they decide on doing so, the butcher will be arranged with and the cows will be given to you all." At this they were annoyed and said, "All right, we are going." As far as I recollect this is all that passed. By the reference to the *Sadhus* not having eaten for three days, I understood that these *Sadhus* were the *chelas* (disciples) of Pohari Baba. I understood that as the cows had been in the thana for three days, the *Sadhus* had not eaten for three days, and did not intend to eat anything until the cattle were released. I knew that the fasting of the *Sadhus* would further enrage the Hindus, and that if the excitement increased there was likely to be trouble.

And was it not to save the row that being moneyed men they wanted to buy the cows from the butchers? I did not so understand it. I understood that they wanted to buy the cows in order that the butchers might not be allowed to take them away. I swear that they did not tell me that there was a large crowd outside. I cannot say what their intentions were in coming to me.

Did you ask them why they wanted to buy the cows? I did not. They had already told me that the *Sadhus* had not eaten. They were then accused persons in the Bala case with a charge which involved imprisonment for two years hanging over their heads. It did not occur to me that it was in order to prevent a riot which might make matters worse for themselves that they came. I thought that they were capable of braving that charge and going in for something worse; but I cannot say anything of their intentions.

It is not the fact that so far from going away angrily, they implored you to allow them to stay inside the thana precincts that night? Certainly not. They said "we will not allow the cows to go away." I did not understand by this that these people themselves would give trouble, but I thought that something would be done. I did not think they would attempt an attack on the thana, or try to snatch the cattle away from the Police. I cannot say whether the first information does not contain a word of the statement "we will not allow the cows to go away." (After looking at the document.) It is not in it, and it is not necessary that it should be there, because it had already been entered in the diary. On the evening of the 6th of September last, at 6-30 o'clock, it was getting dark. At this time it was light enough to see people. Even at 7 and

later you could distinguish the people. At 6-30 you could distinguish the features of persons near you, but not so well at 7 o'clock.

Is that the reason that in your first information you said that it began at 7 o'clock and now you say 6-30? This is not the reason. The disturbance (wakhu) was at 7. I have not stated in the Court that it occurred at 6-30. I have said I saw the men coming from upstairs at that hour. The first information gives the time approximately when they had come up to the thana. I cannot say what time the first information was despatched, as it is the business of the munsarim under the general rule to do so. There was nothing unusual about the sending of the first information, but it was a very serious matter. The first information was written fresh after the occurrence. By the sentence in the first information I cannot tell if by accident any one was wounded. I mean that I did not actually see any one killed or wounded. I did see two persons fall, but I did not know at that time that anyone was wounded. I thought it very probable that somebody was wounded. Besides the entrance spoken of, there is another small gully leading into the thana. This cannot be seen because it is the house of another person and looks like the entrance of that house; but you can see that it leads into the thana if you go right in. When I said I feared an entrance being effected into the thana from another side, I meant this as well as that I feared they would jump over the thana wall.

At this point the Court adjourned till Monday.

The 4th December 1893.

BEFORE H. W. Gordon, Esq., District and Sessions Judge of Saran, the further hearing of the case of the Empress *vs.* Parmeshwar Singh and six others was resumed to-day (December 4th).

Before proceeding with the further cross-examination of the last witness, Mr. Garth said: I have now got the papers produced by the District Superintendent of Police in the case of assault in which this man (the Police Inspector, Babu Gyatri Prosunno Ghosal) complained of having been assaulted by some persons unknown. I propose to ask him a few questions in reference to them.

The Judge.—What are the papers?

Mr. Garth.—Your Honour may remember that I asked him in cross-examination if he knew Khurshaid, who came to investigate the case in which he complained he was assaulted by certain people, and he swore that this man Khurshaid had nothing to do with that case, and that he came to measure prisoners.

The Judge.—Do you propose to contradict him about this?

Mr. Garth.—I propose to ask him now that I have the papers if he still maintains that Khurshaid, the Sub-Inspector, did not come down in connection with this matter to investigate that case in which the witness was complainant.

The Judge.—You can ask him, but you cannot contradict him under section 153.

Mr. Garth.—At present I do not want to contradict him.

The Judge.—I am only drawing your attention to that. These questions were put with a view to shake his credibility by damaging his character.

Mr. Garth.—I propose to show that the statements made by him on Friday were not true.

The Judge.—Not all that he said?

Mr. Garth.—What I propose doing at present is only to put a few questions to him.

Babu Gyatri Prosunno Ghosal was then put into the box and further cross-examined by Mr. Garth.

Mr. Garth.—(Putting the papers referred to in his hand). Look at these records. Are you now prepared to swear that Mahamed Khurshaid, Sub-Inspector of the Inspector-General's Reserve, was not here to investigate your case between the 22nd and 28th of June?

Sub-Inspector Mohamed Kurshaid of the Inspector-General's Reserve did enquire into this case, but not Khurshaid Ali, Inspector.

Were there two persons of the name of Khurshaid from the Inspector-General's Reserve here ?—I do not remember.

The man who came to measure the convicts is not the same person. The Sub-Inspector Mohamed Kurshaid is another person. In the month of June last I cannot say if there were two men named Khurshaid here from the Inspector-General's Reserve. I cannot say whether Khurshaid Ali came here in the month of June last or not. At the time when my case was investigated, I only knew about this Mohamed Khurshaid. I do not know whether the other Khurshaid was here at the time or not. So far as I am aware there was no other Khurshaid but Mohamed Khurshaid from the Inspector-General's Reserve here at the time when my case was being investigated. The other day I said I did not recollect a man named Khurshaid coming to investigate my case. I had then forgotten this circumstance. I was being asked about Inspector Khurshaid Ali. I had two or three conversations with Sub-Inspector Mohamed Khurshaid when he was investigating my case. I did not hear what he reported to the Inspector-General, nor did I ever see those papers.

I saw on the morning of the 7th that some of the tiles of the roof of the thana were damaged. The tiles were damaged on the night of the 6th. I have never been asked about the tiles before, and as far as I can recollect I have never deposed to this fact before. I conjecture that the tiles were damaged by the mob by *lathi* blows. I never ordered any one on the evening of the 6th to remove a portion of the tiles. Nathuni made a statement to the District Superintendent on the 6th. He also made a statement to me on the same day. This was at the time of the identification.

Mr. Garth.—You remember that I asked you before whether anything else happened at the time of the identification, and you said nothing else?

Yes, I said so, but you questioned me in connection with the identification, and my answer had reference only to the identification. At that time I asked Nathuni whether he knew any of these men, and he pointed out these men. Nothing else was said, that was all. In the Bala case I do not recollect if I said:—"Tanna, Nathuni pointed them out, and said Parmeshwar and Ramnath were on horseback and were inciting the crowd to rescue the cattle, and that Rajmun was one of the crowd." (After looking at his deposition in that case) Yes, I said so. I see that I did not say anything about their having said "the cattle will not be allowed to go." It is not in my deposition So far as I recollect, I have told everything of what happened between the going to the gate and the dispersing of the mob. I have stated nothing about the lanterns. I cannot remember anything else which I may have omitted. When we were admonishing the mob and remonstrating with them we had two lanterns; but when the crowd came forward the lanterns were placed in the constables' sheds on both sides of the gateway. The sheds open towards the south. It is not on account of my cross-examination with regard to the darkness that I have now introduced the lights. I all along recollected this, but I was not asked with regard to the lights. They were hurricane lamps; one was in the hand of the Munsarim Ali Hossein, and the other was in the hand of the servant of Ali Akbar, the head-constable. Afterwards I came to know that the second man was the servant of Ali Akbar. In the Lower Court I said it was Khyrat Ali's servant who carried the second lamp. Since then I came to know that this man was Ali Akbar's servant. Mr. Lang, the Magistrate, said that the evidence of the other man who held the lantern was important. Ali Hossein had been examined. After this suggestion of Mr. Lang's, one Piru was examined. He was the man who held the second lantern. There are two sheds, one on each side of the gateway, and each of them has a veranda. These verandas are never described as the verandas of the thana. When we were "speechifying" to the mob, the men with the lanterns were a little behind us. I know where they stood. When I was *sumjaoing* the mob, I may have looked back, but I cannot recollect. The lantern-bearers were outside the *phattack* (gate), in front of the guard, which was drawn up at the gateway. They remained there all the while we were *sumjaoing* the mob. After the mob dispersed, we did not go out with the lanterns again. There was no necessity for seeing at that time, as we wanted to catch some of them, and did not require the light to catch them. I cannot, without looking at the deposition, say whether before the Magistrate I did or did not say that it was owing to the darkness we were unable to catch

them. (After looking at his deposition in the Lower Court) Yes, I did say so, I cannot say how many buckshots there are in each cartridge.

Mr. Garth.—I would ask Mr. Sutherland to produce one of the cartridges, in order that the Court and the assessors may see for themselves how many shots and how much powder each of them contain. I take it that they are all the same.

Mr. Sutherland.—I do not know why my friend appeals to me.

The Judge.—I should like to see one myself.

Mr. Garth.—I think it would be extremely interesting in this case. I suppose my friend can get one, as there were a number left over. I suppose they are all of the same pattern?

Mr. Sutherland.—I do not know why my friend should always appeal to me.

The Judge.—As representing the Crown, I do not see any objection. I should like to see one, and I dare say the assessors should like to see one.

A little later a cartridge was produced and the charge taken out and placed on the table for the inspection of the Court and assessors. It contained twelve shots and a charge of white powder.

Witness continued.—It does not require a minute to discharge the guns, eject the cartridge and reload. It would be less than a minute. It is true that only two of the armed guard had guns. I do not know if Khyrat Ali has stated that there were only two of the armed guard who had guns. He has been suspended since, but it was not on account of what he then stated. As far as I know, Khyrat Ali had no *bundook* that night.

Mr. Garth.—Was not one reason for his suspension that he did not fire his gun that night?

Mr. Sutherland.—I object. Khyrat Ali will be called.

The Judge.—He may or may not know. There is no harm in putting the question.

Witness answered.—I cannot say that one of the alleged reasons for his suspension is that he did not fire that night. None of the persons arrested in this case were arrested on the spot. It is not true that after the occurrence of the night of the 6th I went round from village to village enquiring who were sick or hurt. I went to one or two villages, but it was not for this purpose. I never went to enquire who were wounded. I cannot say whether any policemen went about enquiring if anyone was hurt. There was a large number of police officers there, and I cannot say what orders each of them received. I have heard that some policemen did go enquiring for wounded men. Certain men who were charged have been released, but I cannot say if some of those who were arrested were released without being put before the Magistrate. I was not the investigating officer. I cannot recall to mind any one called Ramput Shukul, and I do not know whether any man of that name was arrested. I said before the Magistrate that I recognised Hargovind and Kuldip, and that they were prominent members of the unlawful assembly (after looking at his deposition). They were all prominent. I did say "Kuldip, and Hurgobind were prominent in front of the mob during the riot. Kuldip Roy and Dudraj I identify as being the most prominent up to the end, brandishing their *lathis*. I can for the same reason identify Khedu and Hurgobind, who were jumping about in a fanatical fashion, shouting wildly and waving their *lathis*. Notwithstanding that evidence by me, these men, Hurgobind and Kuldip, were discharged by the Magistrate. The name of the head-constable of the armed guard is, I think, Nowjadik Ram. I have never before heard of a cow rescue in which the thana was attacked by the mob, and the police fired upon the mob. I have heard of an Inspector Zinnat Hossein who was in this very district. He went to a place called Berhampur in the Shahabad district. I have never heard of a similar case at Berhampur in which the mob were fired upon, but not from the thana. I was not there, and I cannot say whether the firing was from a house occupied as a temporary thana. I do not know whether for this Zinnat Hossein was thanked by Government and promoted to Assistant Superintendent.

Re-examined by Mr. Sutherland—I saw Mr. Boileau for two or three minutes in his *tam-tam* before the thana at Bassuntpur; it was between 11 and 11-30 on the 5th. I first saw the accused Parmeshwar, Ramnath, and Rajmun about 3 o'clock on the 6th at the thana downstairs. I had no reason to believe that the accused were pointed out to the identifiers previous to their identification.

Mr. Garth objected to this last answer going down, as the Court could not take what he "had reason to believe."

The Court after some discussion admitted it subject to Mr. Garth's objection.

Witness.—At the time of the identification the accused themselves made no objection to the identification. At the time of the firing I saw two persons fall, but when the mob dispersed they dragged these men away. I said so in the Lower Court.

Mr. Garth submitted that this had nothing to do with the cross-examination and did not arise from it.

The Court recorded the answer subject to Mr. Garth's objection.

Witness continued.—We said before the Lower Court that we discharged our revolvers. As far as I know none of the guns were loaded with anything but buckshot.

Mr. Sutherland.—(Handing witness the papers which had been called for by Mr. Garth and which referred to the Khurshaid incident). Was not Mohamed Khurshaid's report on your case submitted in C. Form as true?

Mr. Garth objected to the question, which was disallowed, and witness in answer to further questions by Mr. Sutherland said—Among all these papers there is no report from the Inspector-General's office. At the time I complained in the assault case I was Inspector of Police at Chapra. Since the time of the enquiry by Mohamed Kurshaid I have not been suspended, degraded or punished in any way. After the night of the 6th September I next saw Parmeshwar, Ramnath, and Rajmun at Basantpur on the 12th and 13th September, after they were arrested.

To the Court.—Myself, the sub-inspector, the head-constable, and two writer-constables were at the thana belonging to the regular police, and we had our servants, and besides them there was a guard of eight constables under a head-constable, and the butchers who were in charge of the cattle, on the night of the 6th September.

Syad Ali Akbar, Head-constable of the Basantpur thana, was the next witness called by the prosecution. In answer to Mr. Sutherland he said—In September last I was head-constable at the Basantpur thana. Inspector Gyatri arrived at Basantpur thana at about 11 o'clock in the forenoon of the 5th September. I know Parmeshwar, Ramnath and Rajmun who are present in Court (identifies them). I saw these men for the first time at about 3 P.M. of the 6th September at the thana. I was seated in the verandah of the *kotah* when I first saw them coming through the gate (*durwaza*) and come upstairs. I mean the *sadar durwaza* the main entrance. It is only a gateway and has no doors. They came upstairs, and when these people came upstairs, about fifteen or sixteen other people were called upstairs and made to sit down with these three men. After they were all seated together, the complainant Nathuni and his witnesses who were with their cattle were sent for. I saw Nathuni first on that day in the *kotah* upstairs. When Nathuni came up he was by himself. When he was there Gyatri Babu asked him—"Can you or do you recognise any one among these people?" He identified two of them, Parmeshwar Sing and Ramnath. Nathuni pointed the men out with the finger. Two other people also identified two or more of these defendants. I remember one of these men—Tanna I think is his name. I cannot just now recall the name of the other. Tanna also identified the accused upstairs in the *kotah*. As far as I can recollect, Tanna identified the three men Parmeshwar, Ramnath, and Rajmun. When Tanna identified them they were seated among some fifteen or sixteen other people. After Nathuni had identified the two men and was made to sit down, Tanna was called; this was about four or five minutes after. Tanna was not there when Nathuni identified the accused. The third man also identified the three accused whom Tanna had identified. This identification was under similar circumstances, the accused still being seated among the fifteen or sixteen other persons. This man was not present at the identification by Nathuni and Tanna. The persons who identified the accused are butchers. At about 5 P.M. the inspector, these accused, and I came down from the *kotah*, and these people were enlarged on bail (zamanath) sureties. The bonds were written in my presence. There were three sureties. Hazir Ali, the munsarim, wrote out

all these bonds, as far as I can recollect. After giving security the accused went away. There was an entry made in the station diary regarding the taking of security for the attendance of the accused. As far as I can recollect I wrote this entry. This (shown) is the station diary of the Basantpur thana. This (shows ex. E.) is the entry referred to. It is in my handwriting. I saw these three accused at about 5-30 P.M. on the same evening at the thanna. I was at that time in the lower floor of the *kotah* in a verandah near the *sherista*. The accused were accompanied by their bailors. At that time were present Hazir Ali, munsarim, Gyatri Babu, inspector, and Khyrat Ali, sub-inspector and myself; we were all in the verandah downstairs. I think perhaps one Ali Hossein, a writer-constable, was there too. In my presence these three accused began to tell Gyatri Babu: "*Goru Deinapur tak nahin jaegah.*" (the cattle will not go as far as Dinapur) "*Behtur hoga dam dilaka hum log ko gye dila do.*" (It would be better if you had the price of the cattle paid to the butchers and the cows made over to us) and Gyatri Babu said: "I have no power in this matter (*humara ektiar nye hai*), the Superintendent and Sahibs will come, and I will take their decision, and whatever will be their order I will do that. Then Permeshwar Singh said "*ajhi dila do.*" (Have them made over to-day). The Inspector refused. Then they said: "*Acha hum log jatha.*" (All right we are going.) Then they left and their bailors also went off with them. After they had left the Inspector gave orders to the head-constable of the guard to go to the *bagh* (garden) and bring away the cattle. About 6 or 6-30 the cattle arrived at the thana. The cattle were at the *bagh* near the dâk bungalow where I first saw them on the 3rd or 4th September. The cattle were brought into the thana compound on the 6th at about 6-30 P.M. The butchers and the police guard with their head-constable were with them. This conversation referred to and what transpired after the arrival of the accused and the bringing in of the cattle were all entered in the station diary at the time. The conversation was entered at about 5-30 P.M. After the cattle were brought into the thana at about 6-30 a noise as of a crowd was heard on the south side of the thana. This was also entered in the station diary at the time. (Looking at the entry.) It was entered at 6-30, and is in my handwriting. I was in the thana *kotah* when I heard the *gool* (noise). I was along with Gyatri Babu, the inspector, and sub-inspector Khyrat Ali. After the noise was heard the Inspector ordered the guard to put on their uniforms and arm themselves, and we also put on our uniforms. The order was carried out. When the noise increased and the crowd approached the thana, we came downstairs. We took all the constables and placed the guard (file) outside the gateway along the gateway. Myself, the Inspector, the Sub-Inspector Khyrat Ali, and Hazir Ali, the munsarim, went in front of the file. At this time there was a large crowd there, numbering by *andaz* 2,000 or 2,500 persons. In the crowd we recognised Parmeshwar Sing, Ramanath Sahu, and Rajmun Sahu. Gyatri Babu began to remonstrate with them and told them that they were moneyed men and respectable men, and they should not lead a riot: "Go away now; when the *sahibs* arrive in the morning they will be asked to order the return of the cattle to you all." They (accused) said we do not want to know anything about to-morrow (*kul ke bath nye mananga*); give us the cattle to-day (*aj gye de do*).

The noise which we heard at first were shouts of *Pahari Baba ke jai*, *Kaliji ke jai* and other cries. For some time—about half an hour or a little less—we continued to persuade the people to return to their homes that night. These three ringleaders of the riot said "what are you looking at,—*maro, cheen lo*" (beat and snatch away)." The rioters began to make a noise with their sticks and pushed on. After they said *kya dekta ho, maro, cheen lo.* I did not see them again that evening. We then fell back on the line of the file. One man, whose name I afterwards ascertained was Mutki Rai, rushed forward and struck a constable named Birda Sing and then fell back and mingled with the crowd. This is Mutki Rai (identifies him). Besides those I have already named I also saw others whom I did not then recognise exactly, but whom I can now identify. This is Jawahir (points). I do not remember seeing him at the time. I see Khedu and Ajudya (identified them). I recognise them as having been there. I knew their features, but not their names. After Mutki Rai struck Birda Sing we retreated (*peechay hut gya*) and the mob advanced up to the gate. Gyatra Babu then ordered to "*sulkey fire kuro*" (fire a blank discharge); the "sulkey" was fired. The crowd continued to advance, and we stepped back a little, and a second round of "sulkey" was fired. After twice firing "sulkey"

the Inspector ordered the guard to "golee maro," which they did. I had a pistol, a revolver, which I fired four times as far as I remember. Before the order to "golee maro" was given, the crowd were shouting *police ka jan paila maro, tub goru looto* (first kill the police, then snatch away the cattle). After the shots were fired into the mob they ran away. When I recognized the first three accused that night they were four or five hands distant. We had two hurricane lanterns with us: one was in the hand of Ali Hossein, constable. I did not notice at that time who carried the other lantern, but afterwards found out that it was my servant Piru, a Dhunia by caste. The next time I saw Ajudhya Rai, the prisoner, was on the 17th September. When I went to his house in Pusnowli village, I saw him in his cattle-shed. When he saw me approaching he ran into a *makai* field. Then I ordered Ram Golam, chaukuidar of Pusnowli, to "puckro" and I also ran after him myself. I met Ramgolam before I went to Ajudhya's house. I did not go into the field of *makai*. Ramgolam caught him and brought him to me. I took Ajudhya to the Maharagunj police outpost. When he was brought to me by the chaukidar, I found he was wounded on his left cheek below the eyes.

This concluded the examination-in-chief of this witness, and the Court adjourned till tomorrow.

The 5th December 1893.

His Honour on the 2nd of December drew attention to an error which had somehow crept into an otherwise very accurate and very full report of the first day's proceedings in the dák edition of the *Englishman* of the 1st of December. It was there stated that the two assessors in the case "were selected from amongst the assessors summoned, as they said they knew English but imperfectly." This, His Honour took occasion to remark, was not correct, he having selected them particularly because they knew English and could follow the argument of Counsel. His Honour then asked both assessors if they found any difficulty in following Counsel, and having received satisfactory replies from both, allowed the case to proceed.

The further hearing of this case was resumed this day (December 5th) before H. W. Gordon, Esq., C.S., District and Sessions Judge of Saran.

Ali Akbar, in cross-examination by Mr. Garth, said.—I was the head-constable at the Maharajganj outpost. I am still there. That outpost is under the Bassuntpur thana. In July last Khyrat Ali was Sub-Inspector of Bassuntpur. He would also be called the daroga. So far as I remember, he was Sub-Inspector in June also. I was not there in May, and I cannot therefore say anything with regard to that month. I had heard of a case in which Hira Ahir was complainant and Parmeshwar Sing was defendant. I had heard that Parmeshwar was acquitted in that case. I cannot say when all this occurred.

Mr. Sutherland objected to all this as irrelevant.

Mr. Garth.—What I want to show is that the police received a severe check in this matter. The objection was overruled.

Witness.—It was after June that I heard of Parmeshwar Sing's acquittal. The Sub-Inspector who investigated that case was not Khyrat Ali. Hazari Lal was the Sub-Inspector at Bassuntpur before Khyrat Ali. As far as I can remember, Khyrat Ali came to Bassuntpur as Sub-Inspector in June. Hazari Lal was the predecessor of Khyrat Ali. I heard that Hazari Lal was ill in May, but I do not remember exactly from whom and when I heard it. It was in Rajunathpur that I heard this. When I was at Raghunathpur I never used to come to Bassuntpur.

Mr. Garth.—Did not the Magistrate in that case say (reads out a passage).

Mr. Sutherland objected to what the Magistrate said in that case.

The Judge.—How can you do that? You cannot read out a passage from a judgment. I cannot allow the question in that form. I do not say you are not at liberty to refer to that case, but I cannot allow the question in that form. I do not think any remark made by a Magistrate in another case can be evidence in this case.

Witness.—Hazari Lal is not there now.

Mr. Garth.—Have you heard, do you know why Hazari Lal left?

The question was objected to by Mr. Sutherland, but His Honour overruled the objection.

The witness answered.—He left on two years' furlough when he became ill. I do not know in what month he got ill. I cannot give the year even when he got ill. It was certainly within ten years. It is less than five years ago. It is more than six months ago. I know constable Birda Singh since I went to Bassuntpur on the 17th June. I was not in Maharajganj in June. I went to Maharajganj on the 23rd or 24th September. I cannot say whether the Magistrate delivered judgment in the case of Hira Ahir *versus* Parmeshwar before or after I went to Bassuntpur. I cannot swear that the judgment was not delivered on the 7th July. I cannot say whether Birda Singh was or was not a witness in the case. I heard this from you for the first time. Before the 4th September I had heard the name of Parmeshwar Sing in connection with the former riot case—the case of Hira Ahir *versus* Parmeshwar Sing. I cannot say exactly when I heard it. It was talked about in the thana. I had heard that he, Parmeshwar, was acquitted. I did not hear what the Magistrate said in acquitting him. There was no conversation as to what the Magistrate said in acquitting him, but it was only said that he was acquitted. If a Magistrate reprimanded an investigating officer, it might or might not be a matter for conversation among the police officers. It is possible for it to be spoken of. I do not remember having conversed with Khyrat Ali about this matter.

I know Mr. Lang who tried this case; he was the committing officer. I cannot say whether he is the same man who tried the case of Hira Ahir *versus* Parmeshwar Singh. Since I was examined by Mr. Lang in this case, I have had no conversation in reference to this case with anybody. We have talked among ourselves. There has been no particular talk about this case. I cannot name any particular person with whom I spoke about this case. I spoke to the line Sub-Inspector, Bullak Ram. I cannot rommber having spoken to anybody else. I have had conversations with Gyatri in connection with this case, but this was very generally, and not of any particular part. I had no recollection of having spoken to Gyatri. I have had conversation with Khyrat Ali, but also generally. I have also spoken with Hazir Ali and Ali Hossein. I have had an ordinary talk with the Sub-Registrar also. My depositions are not fuller here than in the Lower Court because of these conversations. Before the Magistrate I did not say anything with regard to the identification by the butchers, because I was not asked a word with regard to it. I saw when there, three men who arrived at the thana on the 6th; 15 or 16 men were brought up. These men were brought from outside the thana, but I cannot say whether they were brought from the streets or the market. They were not seized and brought. They were simply called and they came willingly. A constable, whose name I do not remember, was sent; he was ordered to go and bring 10 or 20 people from outside the thana. This is the *dustur* of the thana in such cases. If some people refuse to come, the police go to others who come willingly. I did not know any of those 16 men who were called. I do not know who they are. If I see them again, I may perhaps be able to recognize some of them. Besides the pointing out of the men, the statements of the butchers were written down by Gyatri. They had given statements before to the District Superintendent, Captain Boileau. The statements taken by Gyatri referred to the identification, but I cannot say if they added anything of importance more than they had stated to Mr. Boileau. Gyatri might have known what was deposed by the butchers. Gyatri and the Superintendent were in the same bungalow when the men were examined. I saw Tanna Kassye in the cutcherry premises to-day. Among the 15 or 16 men brought up, there were no thana servants, but I cannot swear that there were not. In my deposition in the Lower Court I did not specify the words used by Gyatri, and by ourselves in remonstrating with the mob, but I said *sumjaoing*. This (the words used) I remembered myself all along, and it is not due to any of the conversations I had that it was brought back to my mind. I remembered it when I was examined by the Magistrate. I told the Magistrate that the conversation commenced by the accused saying "we must have the cattle at any price." I had not forgotten this yesterday. I was not fully asked on the subject, and therefore I did not give the whole of the conversation. Yesterday I was asked to give a brief account of what took place. I cannot swear that I was asked to give a "brief" account. In the Magistrate's Court I do not recollect if I mentioned that Ali Hossein and Hazir Ali went in front of the guards, along with myself, Gyatri and Khyrat Ali. These are the five men who went to the front of the armed

guard. Besides these five no one else went in front of the armed guard. The guard were drawn up right in front of the entrance outside the gate. I do not know exactly where the head-constable of the guard is. I do not remember if he was examined. The men who carried the lanterns were Ali Hossein and another man. Ali Hossein accompanied us, and the other man remained near the guard. He was just outside the gate, but I cannot remember if he was outside the guard or not. When I went beyond the armed guard, I saw him outside with the lantern

This man did not come along with me. Ali Hossein came along with us with a lantern, and the other man I saw standing with the lantern near the "file." I cannot remember whether he was outside the file then, or behind them, or alongside of them. After we were examined by Mr. Lang, I found out who the second man with the lantern was. On enquiring at the thana we found out who it was that carried the second lamp. I do not remember who told me the name of the man. I do not know if the Magistrate ordered Inspector Kleyn to find out the man's name. On enquiry it turned out to be my own servant. On that night I did not notice that it was my own servant. When I went in front of the armed guard it was dark. If we had not had the lamps, the men could not have been recognized nor their features distinguished. These men were standing there holding the lights; when there was a great rush they moved away. They were not injured at all. They retreated behind the file, but I do not know where they went. I also fell back on the file. I was not injured in any way. When I fell back in the file, the crowd were only two or three cubits off. There was no time for the crowd to rush into the thana after the first blank discharge, and before the guard could reload and fire again. When we were two or three cubits from the mob, we retreated four or five paces and fired the "Sulkey." The crowd were about to advance, and did advance slightly when we fired. This stopped them.

I recognized Khedu and Ajudhya in that crowd. So far as I remember, I did mention their names in the Magistrate's Court, but I cannot say if I said I recognized them in the crowd. Since giving evidence before the Magistrate, I do not remember hearing anything further about them. I think I said to the Magistrate that I recognized there Hurgobind, Kuldip Rai, Doodraj Barhi and Gungadas *alias* Pohari Baba. I identified them by their features, and with regard to Kuldip and Hurgobind, I said I could swear to them as being persons who were present in the crowd brandishing their sticks. Yesterday I did not mention these people because they were not present in Court. Kuldip and Hurgobind were discharged by the Magistrate notwithstanding my evidence. I did identify Ajudhya before the Magistrate. At first Ajudhya was not present in Court, not having been arrested yet. When afterwards I gave evidence of having arrested him, as far as I remember, I said I recognised him in the crowd. I told the Magistrate so, but I cannot swear that I did.

The riot commenced at 7 o'clock, and by the time we got back to the thana after chasing the rioters, it was about a quarter to eight. I have sworn that the entries were made in the diary at the time stated in the diary. (Ex. N. in the lower Court shown to witness.) This entry was not made at 7 o'clock, but at a quarter to eight. I have put down 7 o'clock as being the time at which the rioting commenced. When the riot was over it was written. What I said with reference to the entries yesterday refer only to those which I was asked about. This is not an exceptional thing. In matters occurring at the thana it is usual to put down the time of the occurrence, but if there is anything to be entered that has taken place elsewhere, we put down the time of receiving information and the time of occurrence. In the diary there is nothing to show when the entry was made. All the other entries (E,F,G) were written at the time shown in the entry. The order to bring the cattle from the grove was given at 5-30. The visit of these men at the thana, after giving bail, was at 5-30. The interview of these men with the Inspector lasted 5 or 7 minutes. The man to whom the order was given to bring the cattle into the thana was there, and he received the order and went off immediately. The entry was written approximately; therefore I put down the time of the order to bring the cattle in, as being issued at 5-30. The 5-30 put down refers to the time when the men came, the conversation and the subsequent order, after which the entry was made. It is not a fact that all these entries (E,F,G, and N) were made at the same time. They were each of them written as they occurred.

In N, which purports to give an account of the night's occurrence, is there any mention of the names of these three men, Parmeshwar, Ramnath, and Rajmun?—(After looking at the entry) Their names do not appear. Their names were written in the first information, and this a brief abstract of the first information; therefore they were not mentioned in it. In the entry it is written that the riot was headed by the men who came in the evening to negotiate for the purchase of the cows. This would not be longer than putting in the names of the three men. I do not know why their names are not given. Gyatri dictated the entry, and I wrote it. The names would have taken the same space.

Is it not a fact that after the occurrence you sent word to these three men—Parmeshwar, Ramnath and Rajmun—that if they sent you Rs. 400 each, their names would not appear at all? I never sent such a message.

Did you have any conversation with Ajudhya Roy when you arrested him? Yes, I had some conversation with him. He did not tell me that the mark on his cheek was a boil. He told me that the edge (*kyne*) of a bamboo had scratched his cheek. There was a mark of a gathering on his cheek like a boil. I do not know a man by the name of Ramput Shukul. I did not write the first information in the Bala case. I think it is signed by Khyrat Ali. I come from Shahabad. I have heard the name of Inspector Zinatt Hossain. I have heard that in the Berhampur Mela the police fired on the mob in a cattle-rescue case. I have not heard that he was promoted for this. He was an Inspector here. He is an Assistant Superintendent now.

Re-examined by Mr. Sutherland.—Before going to the Bassuntpur thana I was at Raghunathpur. From Bassuntpur I was sent to Maharajganj, where I am still. I was not a witness in the case brought by Hira Ahir against Parmeshwar. I had nothing to do with that case. As far as I know, at the time when all this took place between Hira Ahir and Parmeshwar, I was at Raghunathpur, which is twenty *coss* from Bassuntpur. Raghunathpur is in the Sewan subdivision. The reason why I did not state in my evidence to the Magistrate what I said in my examination-in-chief is that I was not asked with regard to it. In my examination-in-chief I did not mention Kuldip and Hurgobind, because I understood your question to refer to those then in Court. I have been for about 23 or 24 years in the police.

Syad Hazir Ali, examined by Mr. Sutherland, said.—I am the writer-constable at Bassuntpur, and have been since 1892. In September last I was munsarim or writer-constable at Bassuntpur. On the 23rd of August last, Mahadeo Rai, chaukidar, and Raj Roshun, chaukidar, gave certain information at the thana, which I recorded in the station diary at the very time of receiving the information.

Mr. Sutherland wanted the witness to look at the station diary, and, refreshing his memory, to state whether what was entered was what Raj Roshun and Mahadeo had informed the thana.

Mr. Garth objected, as it could be no evidence against his clients. The fact that a drum was beaten was wholly irrelevant.

Mr. Sutherland.—The beat of drum was calling the meeting.

The Court gave permission to Mr. Sutherland to put only such questions as would elicit answers corroborating the chaukidars' evidence.

Witness.—(After looking at the entry in the station diary of the 26th of August). They said that Debi Tewari had caused a drum to be beaten in the Bassuntpur Bazar, where people had assembled. They also gave information with regard to the Sabha, which was held on the 26th. It was about 10 A.M., when the chaukidars gave this information in my presence.

Mr. Garth.—I object on the ground that the chaukidars did not say that the Sabha was held on the 26th of August, neither does Mahadeo say what time the meeting took place, and there is nothing to connect the two meetings.

The objection was overruled.

The witness.—The information was given to Khyrat Ali. Mahadeo said that all the Hindus were collecting on the north of the tank at Bassuntpur bazar for the purpose of holding a Gorakshini Sabha, and that a tent had been pitched there.

Another objection by Mr. Garth, who thought that witness was referring to another point of time, was also overruled.

Witness.—The Sub-Inspector then sent Mahadeo and the chaukidar to the meeting to hear what was being said. Mahadeo then left the thana.

Mr. Garth.—I submit that the portion of the evidence which does not corroborate Mahadeo ought to go out of your Honour's notes and the assessors' notes.

The Judge.—What does not corroborate is clearly inadmissible.

The witness.—The Sub-Inspector gave Mahadeo certain orders and he left the thana. In the evening Mahadeo came back in my presence to the Sub-Inspector Khyrat Ali. As far as I remember, Mahadeo came alone. He did not give any information to Khyrat Ali in my presence. I saw the cattle in the Bassuntpur thana first on the 6th September inside on the east side. I had first seen the cattle at Khawaspur on the 1st September. I saw the cattle at Khawaspur at dawn, when I arrived, and till two hours after sunrise when I came away; I saw the cattle also when they arrived from Khawaspur. I cannot, without looking at the station diary, say on what day. I saw them in a grove near a bungalow on the east of the thana, as far as I can recollect. I saw them in this grove on the 2nd of September. There were constables, chaukidars, and butchers looking after the cattle. I know the three defendants, Parmeshwar, Ramnath and Rajmun. I saw them at the Bassuntpur thana in the month of September. It was on the 6th September at 3 P.M. They were released on *zamanath* (security) by the orders of Gyatri Babu. I wrote all three of these bail bonds (shows B, C, and D). After this these people left the thana at 5 o'clock in company with their bailors, whose names are on the bail bonds. I saw these people again that evening at 5-30 in the thana. They were accompanied by the three people, Burraylall, Gulzarilall Panday, and Gozadhur, who were their bailors or sureties. The three accused, Parmeshwar, Ramnath and Rajmun, told the Inspector: "The Sadhus have not eaten for three days; give the price of the cattle to the butchers and release the cattle to us." Then the Inspector replied: "I cannot do anything just now. The Superintendent Sahib will come again to-morrow; and if when he comes the butchers agree, the cattle will be made over to you." Therefore they seemed annoyed, and, saying "All right we are going," they left.

The Court rose for the day at this point.

The 6th December 1893.

THE hearing of the case was resumed today (Wednesday, December 6th) before H. W. Gordon, Esq., District and Sessions Judge of Saran. Judging from the comparatively poor attendance in Court during the last two days, the interest in the case appears to be flagging. The Court was most crowded when Babu Gyatri Prosunno Ghosal, Inspector of Police, was under cross-examination by Mr. Garth. A considerable amount of the time of the Court is wasted owing to the depositions having to be read to the witnesses in Court in the presence of the accused. The reading over of the deposition of the Police Inspector Gyatri Babu occupied a little over two hours, and the evidence of the witness Hazir Ali took about an hour.

Hazir Ali, the Writer Constable, in further examination to Mr. Sutherland, said: After Parmeshwar, Ramnath and Rajmun left in anger, Gyatri Babu gave certain orders in respect of the cattle. In accordance with this order, the cattle were brought from the grove, taken into the thana and kept on the west side. After the cattle were brought into the thana a great noise was heard from the south. At this time I was downstairs in the verandah of the sherista.

Mr. Garth.—One of the accused is very ill, and he says he must go out. He has had dysentery for some days.

The Judge.—Let him be taken out. It is rather inconvenient that the man should have taken ill. It will delay proceedings. You cannot go on in his absence. While the accused was being removed from the dock, Mr. Garth asked to be allowed to see exhibits A and B in the Bala case, and, in reply to a question by the Court, stated that he would in all probability argue the appeal which was pending in that case.

The Judge.—I should have liked to decide the two cases together, because the one seems so much connected with the other. This case is taking a very

long time, and I hardly think it will come to an end this week. I postponed all my other cases for a week, and that apparently will not be long enough.

Mr. Sutherland.—I do not think the proceedings can come to a close this week. I think it very probable that some witnesses examined before the lower Court will not be examined in this Court.

The Judge.—I suppose you will tender them for cross-examination.

Mr. Sutherland.—I will probably tender them, or some of them, for cross-examination myself, but at present do not bind myself to do so. This case will probably take four or five days more. There are a number of witnesses who simply speak with respect to one of the defendants, Ajudhya, and as the decision of this case rests with your Honour, though the assessors have no doubt to give an opinion, I shall ask you to peruse their depositions, and say whether I ought to call them. It is not a case which is tried by a jury where every piece of evidence, however weak or flimsy it may be, must go to the jury.

The Judge.—The case will not in all probability be finished till next week. I mean your address to the assessors will take some time.

Mr. Sutherland.—I will take one morning.

The Judge.—And Mr. Garth will also take some time.

Mr. Garth.—I will probably take some time.

The Judge.—Is this man really too ill to attend, or is it only a temporary illness?

Mr. Garth.—The other day he said he was very ill, and my learned friend gave orders for the Hospital Surgeon to see him.

Mr. Sutherland was not aware of having done anything of the kind, as he did not even know that anyone of the accused was unwell till now.

Mr. Garth was, however, certain that the matter was mentioned to Mr. Sutherland a few days ago, and since then the accused was taken to the hospital. He had been in hospital for the last week. He had been taken to the hospital every evening after the rising of the Court while the other accused were all taken to Jail. Mr. Garth afterwards admitted he was wrong in stating that Mr. Sutherland had been spoken to on this matter.

The Judge.—I see that in the Himalaya Bank case one of the accused was taken ill, and the proceedings had to be stopped. These prisoners are taken every night to the jail; they are not kept in the lock-up here. There is a hospital in the jail for the convicts and trial prisoners. What is the name of the prisoner?

Mr. Garth.—Khedu Koeri.

Mr. Sutherland.—I think your Honour should order that the Surgeon in charge of the jail should give a full report on this man's state of health, and we will then know whether he will be able to attend Court to-morrow.

The Judge.—Where is he?

Mr. Garth.—He is sitting outside and complains of great pain.

Mr. Sutherland.—He had better be seen by a doctor, and we should get a report as to the state and condition of his health, because it will be very inconvenient if we are constantly to be interrupted for an hour or two at a time. This will cause great delay. If he is not in a position to sustain trial for two or three days it would be better if he was placed under medical treatment.

Mr. Garth.—I should like to know as early as possible if the trial must be adjourned.

The Judge.—I think the man might be taken to the Civil Surgeon's house for examination.

After a delay of about three quarters of an hour, the prisoner Khedu Koeri returned to Court and said he felt a little better, and the trial proceeded. The learned Judge, however, despatched the letter he had written to the Superintendent of the jail.

Witness.—The Inspector Babu gave orders to the guard and everybody else to put on their uniforms. The order was carried out. By that time the mob that was making a noise on the south of the thana arrived at the gate, and the Inspector Babu and Khyrat Ali Sub-Inspector, Ali Akbar, head constable, myself, Ali Hossain and the guard went to the gateway. Then the Inspector stationed the guard outside the gateway in a line with the opening. The Inspector went ahead of the guard, and I also went with him. Other police officers also went in front of the guard. The crowd was there with Parmeshwar, Ramnath and

Rajmun in front of the mob (identifies the first three accused). There was a small crowd there, about 2,500 or 3,000 in the crowd then. They (accused) were saying that the *Sadhus* had not eaten for three days, and if the police did not give the cattle up they would not be spared; they would be looted. The Inspector told them "you are respectable men and zamindars; don't do such a thing. Tomorrow the Magistrate and Superintendent of Sewan will be here, and I will take the decision of these sahibs and make the butchers willing, and then have the cattle released to you." They insisted on the cattle being made over to them at once, and said that if the police did not comply with this request they would give their own lives and take the lives of the police and carry off the cattle by force and loot the thana. After the conversation was ended, the accused Mutki came out from the crowd, struck Birda Sing constable with the *lathi*, and fell back into the crowd (identifies Mutki). Before this the men in the crowd were jumping about, beating their breasts and brandishing their sticks and crying out *Pohari Baba ko jay*, *Mahabir ke jai*, *&c.* We all fell back on a line with the guard. The Inspector ordered the guard to "sulkey maro." The round was fired. The three first accused then fell back into the crowd. At the discharge the crowd stopped for a short time and then pushed forward again. We again retreated and they advanced to the thana.

The Inspector ordered another "sulkey," which was fired. The crowd stopped a little and again advanced. The police then received orders from the Inspector to "golee maro," and the order was carried out. Then the crowd fell back and broke and fled, and we chased them a little way. I saw two people in the crowd fall on our discharge, but I cannot say if they were hit or if they fell owing to the shoving and pushing of the crowd. I did not see them after they fell, and cannot say whether they got up and ran away or whether they were helped off by others in the crowd or were dragged away. We had lanterns with us. Ali Hossein had a light in his hand, and another man had another lantern in his hand. These people with the lights were outside the gate. They were not all the while standing in one place, but followed the Inspector about. They were outside all the while the remonstrances went in. I also noticed Khedu Koeri, Dodraj Burhi, Hurgobind Burhi, Kuldip Roy, and Gooder Kandu there on that night in the crowd while we were *sumjaoing* the mob

I knew Parmeshwar Sing and Rajmun prior to the 6th of September both by name and features. I had known them for about four months previously.

Cross-examined by Mr. Garth.—I used to see Parmeshwar Sing at the thana, where he occasionally came to meet Hazarilall Inspector. I do not remember the date or the month when I saw Parmeshwar. Hazarilall was Sub-Inspector before Khyrat Ali. Hazarilall left in June so far as I can recollect. I cannot swear that it was not in June. I cannot swear that it was in July. I remember a rioting case in which Parmeshwar Sing was defendant, but I was on leave while that case was going on. I was on leave in May. I was there at the thana in June and July. I do not remember the month or date when the case was tried and concluded. The case was going on in June. I said that when the case was instituted in May I was on leave. I have heard that Hazarilall, Sub-Inspector, investigated the case. I also heard that Parmeshwar was acquitted, but I do not remember that the Judge found the case to be false. I have never heard what Mr. Lang said in that case in regard to the conduct of Hazarilall. Hazarilall left on sick leave after that case. I knew Parmeshwar in connection with that case, and also previously. I knew him before I went on leave in May. I knew that Rajmun keeps a cloth shop in the bazar. I was examined in this case before the Magistrate. I have stated before the Magistrate that the accused Parmeshwar, Ramnath and Rajmun came with the mob on the evening of the 6th of September. I do not remember whether I stated to the Magistrate what conversation passed with these men. Before the Magistrate I said that I recognised eight accused. I was twice examined in the lower Court. I don't recollect recognising the five persons I have mentioned in this Court before the Magistrate. Besides the eight people I spoke to before the lower Court I did not recognise anybody else. I also said before the lower Court that a *fakir* was walking about (*tahalta tha*) near the bridge. I did not forget this man. I thought you meant only the accused. Hurgobind and Kuldip were discharged by the Magistrate in spite of my evidence. I do not know about Gungadass. Gungadass is not in the dock.

(Mr. Garth asked the Judge and assessors to note that he said this without looking at the dock.)

Witness.—I do not know if Gungadass was discharged in this case. The first statement made in the Bala case was made to me. (Exhibit A in the Bala case put to witness) This is the document (the Bala case put to witness). I sent Nathuni with this statement and this letter to the Sub-Inspector.

Mr. Garth.—I tender these. (To witness) And these were before the first information?

Witness.—Yes. Out of the 131 head of cattle, 129 were found. I do not know and cannot say if the butchers sold one out of the 131 head of cattle.

In the Bala case I did not say anything about the butchers selling one of their cattle.

Mr. Garth (reads from deposition in the lower Court) did you say this: "One hundred and twenty-nine head of the cattle arrived here and one of the missing ones was found, but the butchers sold it, but to whom I cannot say?" I do not remember saying that. I cannot swear that I did not say that. I went to look for the cattle. I do not remember whether the two missing cows were found or not. The Muhammadans did not tell me that one of them had been found. I did not report about two missing cows. The butchers said "the missing cows are somewhere here, and we will hunt them up ourselves." I made no report about the missing cows. I made no report, written or verbal, to the District Superintendent on his arrival as to what I had been doing with regard to the missing cattle. What I had done in regard to the cattle I had stated in the thana to a number of people. I made an entry in my station diary and informed Khyrat Ali. I made a return (*bazamat*), but not a report. I stated in the *bazamat* with regard to the two missing cattle that the butchers said they had strayed somewhere, but that they would hunt them up. If I knew that the cow had been sold by the butchers, it would be entered in the diary. I cannot say that it is not in the diary. A nephew of mine was married in May, and I took leave on account of this. I purchased some cloth from Chupra. I did not go to Rajmun for some cloth. I required a *shamiana*, for the wedding, but I arranged for it on the other side. I also wanted some silver articles for the wedding. It is not true that I asked the loan of a *shamiana*, and silver *attardan* and *pandan*, etc., from Ramnath. I don't know that Ramnath has a *shamiana*, or such silver articles. The "information received" in my deposition in the lower Court refers to the coming to the thana of the three accused and the interview, and then returning to the thana, and this is what alarmed us. I did not mean by information that the three accused said it was market-day and the *Sadhus* had not eaten. It referred to their statements and the angry termination of their visit to the thana. The District Superintendent went also on the 6th to Basantpur. I do not know if a week before the rioting case, in which Parmeshwar was acquitted on the complaint of Hira, his nephew Khobari brought a criminal case against Parmeshwar. I do not know if Hira has a nephew named Khobari. I do not know the man's name, but I know an Ahir brought a case against Parmeshwar before Hira's case. In that case I did not take the first information. I have no power to take the first information. One Ahir gave some information which I entered in the station diary. In that case I cannot say if Parmeshwar was discharged and a compensation of Rs. 10 awarded to him. I cannot say what the result of that case was. I do not remember the date or month, but it was in this year that I entered that complaint in the *roznamcha*. I cannot say it was before or after I went on leave. I cannot say even approximately how long before Hira Ahir's case this was. When the District Superintendent was at Bassuntpur on the 6th September, I was at the thana; and I went from the thana to the bungalow. I did not take any papers to the District Superintendent. The Sahib was taking the statements of the butchers, and I was standing there. I did nothing else. At that time there were no persons who had been summoned in the Bala case outside the bungalow. They had not come there. They were not called. In the ordinary course they ought to have been there, but they were not there. I did not tell the District Superintendent that in the ordinary course they ought to have arrived, but were not there. The District Superintendent did not ask me if they had arrived, nor did he ask anyone else this question in my presence. I do not know if Nathuni was one of the

butchers examined that morning. When these butchers were being examined I was sometimes in the bungalow and sometimes outside. I cannot give the number of persons who were summoned. The District Superintendent gave the Babu (Gyatri) a list of those who were to be summoned. I cannot say approximately how many persons were summoned. More than five were summoned. I cannot say how many between five and seventy were summoned. If the men summoned had been there outside the bungalow, the District Superintendent would have seen them. I did not go to them to take their names down and give them to the District Superintendent. Mr. Boileau did not, before he went away, tell Gyatri to "take these men away and take their statements."

Mr. Garth tendered this witness's depositions in this case in the lower Court and his deposition in the Bala case.

The witness, in re-examination, to Mr. Sutherland, said.—In the case of Hira Ahir against Parmeshwar I was not a witness. In that case I did not take any part in the police investigation. In the case of the other Ahir, which was before Hira's case, I did nothing beyond taking his information in the diary and deputing a constable. The Bala case was enquired into by Khyrat Ali, Sub-Inspector and subsequently by Sheik Kassim Ali, Inspector (Exhibit A in the Bala case handed to witness). This document is the first statement of Nathuni, which was first recorded in the station diary. The first information in the diary is only an abstract. This (Exhibit A) is not a word-per-word statement of what he said, but only an abstract. My nephew's wedding took place in mauza Milkey in Arrah zillah, Shahabad district. This place is about seventeen or eighteen *coss* from Lucknowrah.

Mr. Garth obtained leave to put a few more questions. Witness in answer to him said:—In the hands of eight men there were rifles, and the Inspector Babu and Ali Akbar had pistols. I did not say in the lower Court that two of the armed guards had rifles.

To the Assessors.—The practice is when the officer in charge of the thana is present, he first writes the first information in the form and then an abstract is made in the *roznamcha* (station diary). The abstract is made from the first information.

To the Court.—In this case no officer was present, and I recorded the information in the station diary, because I have no power to record the first information on the forms.

Ali Hossein, examined by Counsel for the prosecution said—I know Parmeshwar, Ramnath and Rajmun (identifies them). In September last, on the 6th these three men came to the Bassuntpur thana. On that day I saw them at three o'clock, when they came. They went away at five o'clock; within that time security was taken from them to compel their attendance. When they left the thana they left with the three persons who were there security. In half an hour these three persons accompanied by their bailors returned to the thana. They had some conversation with Gyatri Babu and among themselves. They said that the police should take the price of the cattle and make the cattle over to them. The cows were not allowed to go. The *Sadhus* had not eaten for three days. It would be better if the price of the cows was accepted and the cattle released. The Inspector said: "I have no power to do that. the Sahibs come, I will consult them and whatever they say will be done." Then these men left saying: "Well, we are going." After they left, the Inspector did not give any *hookum* in my presence. On that day the cattle came into the thana at 6-30 P.M. After the departure of the three accused, Parmeshwar, Ramnath and Rajmun and their bailors, the Inspector ordered the cattle to be brought into the thana. After the cattle were brought to the thana, a very large crowd came. I heard a noise from the south, but did not see a crowd (at that time). After that I saw a large crowd. I was then in the sherista downstairs. Steps were taken to deal with the crowd. The Inspector came down and with the other officers went outside. I also went with the lantern from the sherista. We went to the gate. The constables who were armed with "bundooks" were stationed at the *phattuck*. Then we were *sumjaoing* Ramnath, Parmeshwar and Rajmun. We told them: "Why are you doing this? You are respectable zamindars; to-morrow the Sahibs will come and release the cattle." They replied: "Give them to us to-day." At that time we were three or four paces from them. When we were

speaking to these three men I recognised them. They had come during the day, and I had seem them before also. I recognised them by the light. There were two lanterns there. I had one in my hand, but at that time I did not notice who the other man with the other light was. The crowd were shouting *Kali jee ke jai, Pohari Baba ke jai.* I also recognised one Dudraj Burhi and Khedu in the crowd. Khedu is here (identifies him). They kept on shouting *mowesi nikal do* (bring the cattle out). When they rushed forward, we stepped back a few paces. A man whom I don't recognise rushed forward and struck Birda Sing. We fell back into the thana (points out the distance). The police at that time had done nothing. When the crowd advanced the second time the Inspector ordered the guard to fire a "sulkey," and I moved off and put the lantern on the veranda at the gate. The veranda faces the east. The veranda faces south. The "sulkey" was fired twice.

The crowd did not run away when the "sulkeys" were fired. When they again made a noise and advanced, the Inspector gave the order to "*golee maro.*" There was a discharge and the crowd ran away.

The Court here rose for the day.

The 7th December 1893.

THE further hearing of this case was proceeded with to-day (Thursday, December 7th,) before H. W. Gordon, Esq., C.S., District and Sessions Judge of Saran, who on taking his seat in Court, informed counsel on both sides that the Assistant Surgeon had reported that the prisoner who was taken ill in Court yesterday was quite well and able to attend Court and sustain his trial. This officer had, however, recommended that the prisoner in question be allowed to sit down in Court during the trial, as he was still weak from the effects of the illness from which he was till recently suffering. There was nothing seriously the matter with him. The report of the Assistant Surgeon was then handed to Messrs. Sutherland and Garth, after which the trial was proceeded with.

Ali Hossein in cross-examination to Mr. Garth.—I did write the first statement in Hera Singh's case in the *roznamcha*, but I did not write the first information in the form. This was about four or five months ago. Hazari Lall was the Sub-Inspector who investigated this case. I cannot tell even approximately how long ago this case was decided. The result of the case was that the defendant was acquitted. Hazari Lall left the thana owing to illness. He was ailing for some time previous to his going away. I have heard nothing about this case at the thana, and there has been no conversation about this case at the thana. I do not remember if there was any other case prior to Hira Ahir's case, in which Parmeshwar Singh was defendant. I have been at the Basantpur thana for about eight months. I do not know in what month I went there. I have not heard that the Magistrate allowed Parmeshwar Singh Rs. 10 as compensation for a false and vexatious case being brought against him. Since I gave evidence in the Lower Court, I have not had any conversation with anybody. In the Lower Court I only answered the questions put to me. I do not remember what questions I have been asked here and have not been asked in the Lower Court. I do not even know whether my evidence in this Court is fuller than what I said in the Lower Court. I do not remember anything of what I said before the committing Magistrate. I remember saying that the Inspector told these men "You are the *raises* of the district, respectable men." The crowd were first making a noise then the Inspector spoke to them. I do not remember if they spoke first. I did say before the Magistrate the crowd began to clash their *lathis* and shouted *moweshi ko nikal do thana se, agur tum logue moweshi ko nahin deoga, tum logue ka jan marengi* (put the cattle out of the thana, if you do not give up the cattle we will take your lives). The crowd first said all this and then the Inspector spoke to them. I saw the three first accused, but cannot say which of them was eastward of the police and which was in the centre. I do not know what positions they occupied, as they were moving about among the crowd I cannot remember who were on the east and west of the Inspector. I was about a step behind him. I cannot remember who was on my right (east. I had a lantern in my hand which I held in this way (shows, sometimes at his

side, and sometimes raising his hand, but not above the belt). I could see with the aid of the lantern what was happening in front. I could see the mob quite clearly. I cannot remember whether Khedar was on the right or left of the three first accused. I cannot even say where Dudraj was, as they were all moving about from place to place. I do not know from what part (middle, right or left) of the mob the man who struck Birda Singh came out. I put my lantern afterwards on the thana verandah. I mean the verandah of the place where the constables remain; this is not the thana verandah. I made a slight mistake. When Birda Singh was struck we fell back into the thana compound about half way. At that time I had not the lantern. When we began to retreat I put down my lantern. I went out, put the lantern there and followed the men. The other man with the lantern did as I did, putting his lantern on the other side of the gate. I did not notice the other man and did not see him putting down his lamp. I cannot remember what place in the line of the guard Birda Singh occupied, nor can I recollect what position the head-constable occupied. I have no very distinct recollection of the occurrence of that night, but I remember the occurrence itself. I had a *lathi* in my hand. Some of the tiles of thana of the constables' shed were damaged on that night. I did not see any actually being broken. I think this was done by the mob with their sticks; they could have done it from below without climbing the walls which are slightly higher than a man. There is a little slope on either side of the wall. One Ramlall Singh, constable, was also struck I do not remember any other damage or injury done by the mob. I stated to the Magistrate that the crowd had struck the walls with their sticks.

Mr. Garth—I put in the man's deposition before the Magistrate to contradict him as to these passages to which I have drawn his attention.

Re-examined by Mr. Sutherland.—The constables' veranda roof was a little higher than a man. The place on which I placed the lamp was about two feet high.

Birda Singh, constable, examined by Mr. Sutherland.—In the month of Bhadra last, I was on duty at the Collectorate. I went to Basantpur thana in Bhadra with the guard, which consisted of ten sepoys under a head-constable named Nowjadik Ram. I was on duty at the Basantpur bungalow, and had to look after the cows. The cattle were taken to the thana on a Wednesday, on the second day after our arrival at Basantpur. The cattle numbered about 130 or 140 head of cattle. The guard and *goruwallas* accompanied the cattle to the thana. The cattle were brought to the thana at about 5-30 or 6 o'clock in the evening. After this a disturbance took place in my presence. On the south side of the thana a large crowd collected and made a noise. When we heard the noise the Inspector gave us orders to put on our uniforms and keep ourselves in readiness. We took our guns, got ready and went to the *phattuck*. When we were stationed there at the gateway I saw a large crowd had collected near a "Bocul" tree and were making a noise. I was standing in the file and the inspector and others went forward and began to remonstrate with them. He asked them why they were making a noise. While he was remonstrating, I recognised Parmeshwar, Ramnath, Rajmun, and Mutki. They are here in Court (identifies them). After he had remonstrated vainly with them for some time, the crowd were shouting "beat the police and snatch away the cattle." Mutki struck me with a *lathi* on the forehead. There were two lanterns there, by the light of which I was able to see clearly. When I was struck, one lantern was in the *osara* (verandah) and the other was in the hand of some person. The crowd were brandishing their sticks and shouting *Jai Mahabir Baba ke*; *Jai Pohari Baba ke.* When I was struck I told the inspector that I had been struck. Then the inspector ordered us to be "ready." The inspector, after I had told him I was struck, told us to "sulkey choro" (fire blank). We retreated when the mob approached nearer and fired a "sulkey."

Another sulkey was fired, but the crowd did not disperse. On the contrary they kept rushing on. Then the inspector said the *salas* won't mind and ordered us to "golee marro;" we fired the "golee" and the mob broke and fled knocking each other down (*giruth puruth.*)

Cross-examined by Mr. Garth—I was a witness in the case of Hira Abir against Parmeshwar Singh. In that case I said that I saw Parmeshwar on horse-

back at the head of a mob of five hundred rioters. In that case Parmeshwar Singh was acquitted. Besides me, one constable and four chaukidars of the Basantpur thana were also examined in that case. That case was investigated by Hazari Lall. I do not remember in what month judgment was given in that case. I do not remember if it was after the judgment that Hazari Lall left, but it was after the case was instituted that he went away. I do not know whether my evidence in that case was believed or not. I was not the sub-inspector, and I do not care whether I was believed or not, as I spoke the truth. I do not know whether previous to Hira's case there was another case against Parmeshwar, as I was not in the thana. Mutki was in the middle of the crowd. Parmeshwar, Ramnath, and Rajmun were together in front of the crowd. Mutki was not with them; Mutki was in the crowd. He came out of the crowd and struck me. He came out from the middle of the crowd. The whole of the armed guard were armed with rifles, including the head-constable. There were only eight of us in the file and the head-constable, as the others had gone away into the *dehat*. The others went away in the middle of the day; their names were Gopi Ojah, Bholak Singh, and Chutter Bhuj Chaube. These men came back the next day from the *dehat*. When we fired with buckshot the men were about four or five yards off (points); at that time there were about 3,000 or 4,000 persons in the crowd. They were in the road, near the tree, near the well, and on all sides.

(In reading over his evidence he desired to make a correction. He said that the head-constable had no "bundook.")

Peru, examined by Mr. Sutherland said.—I am the servant of Mir Ali Akbar. I used to cook the food. There was a disturbance at the thana about three months ago. I do not remember the day. When I first heard the noise I was in the *bawarchi khana*. It was about an hour after sunset (*ghunta bur rath bith giya tha.*) The noise was made by a crowd. The police went to the gate to see what was going on. I took up the lantern and went to the *phatluck*. I saw the inspector and other officers admonishing the crowd not to make a disturbance. I saw the crowd; it was a very large one. They made a great noise, and one man struck Birda Singh. I placed the lantern in the *osara* and ran away. There were two lanterns outside including mine. The other one was in the hand of Munshiji (the writer-constable) Ali Hossein.

Cross-examined by Mr. Garth.—I knew Birda Singh before. He used to come before. I did say before the Magistrate that the man struck was Birda Sing. I told the Magistrate that a man struck a constable of the guard and then the guard fired. I also mentioned his name. I was in the kitchen when I heard the noise. I came out to see what was the matter. Nobody told me to bring a lantern. I thought the mob went to attack the thana. I also thought it dangerous to go outside. I went to the gate, but did not go outside of it. At that time I did not go out. After everybody had gone I went out. I went out when the danger was past. I went out and fetched some water. I held the lantern thus (holding his hand up as high as his head). I did not recognise anybody. I saw that there was a big crowd there. I was along with the armed guard (*shamil*). I was not behind them. I was with them behind the gate. I was in the middle of the guard. Birda Singh was on the east of me, one man intervening. It was very dark at the time. I saw that they (the men in the crowd) had turbans round their head. They had no cloth tied round their faces. I did not say before the Magistrate that they had pieces of cloth tied round their faces.

Ramattar Pershad, head clerk in the Sub-Register's Office at Basantpur, examined by Mr. Sutherland said:—In September last I saw an unusual occurrence. It was on the 6th September at about 7 P.M. At that time I was seated in front of my door and having a conversation with Biseshari Pershad, Permanand Sahai, and Khub Narain. I saw people coming from towards the east and going on foot towards the thana by the road. We had a lantern in front of us. I saw about eighty men armed with sticks with their loins girded and *muretha* (turbans) on their heads. Among these I recognised Jawahir Lall, Bhugwan Lall, and Misri Sahu. (Identifies Jawahir Lall by saying, "that is him after two men from the north end.")

Mr. Garth.—That is Khedu. This is of the utmost importance and I desire that it be taken down.

The Judge.—Khedu is the third man.

Mr. Garth.—Yes.

Witness.—I knew them before by their names and features. These people are residents of Basantpur. I have been in the Basantpur Sub-Registrar's Office from the 1st December 1892. (There was a movement among the prisoners.)

Mr. Garth.—Do not change the order of the men.

Mr. Sutherland.—One man was sitting down. He has just stood up. No one has been changing the order of the prisoners. I will ask your Honour to take a note of that fact.

The Judge.—If the witness were sent out of the Court and the places of the prisoners changed that would be a good test.

Mr. Garth.—There is no question about his knowing the man. My main point is that he is two or three yards from the man and he cannot see him now. Of course he knows the man; he is the patwari of the village, and there is no doubt that the witness knows him.

Witness continued.—I have known Jawahir Lall for about a year from today. He is the patwari of the village. When I saw him and the other men I have named, they were two *lathis* or five yards off.

Mr. Sutherland.—I propose either sending the witness out of the Court and changing the entire order of the prisoners, or asking him to turn his face round, so that he cannot see and then change the positions of the accused. I leave the choice to my friend.

The Judge.—I think the order of the accused might be changed.

Mr. Garth.—Any one outside might have told him. Your Honour will observe that it is a most curious thing that the man pointed out was the man who was third from the end.

The Judge.—Which of them was sitting down?

Mr. Sutherland.—The second man was sitting down. The man between the boy and the man in question.

While the witness was placed in the Court in such a position that he could not see what was going on, the order of the prisoners was completely changed. On being brought back into the box he said. The man who is putting his eyes down is Jawahir Lall. (After a long pause, during which he looked steadily at the persons from a distance of five or six yards) I cannot just now recognise him.

Mr. Garth asked that a note be taken of the time of day. (It was half-past two o'clock).

Witness.—The men as they went along were saying: "What are you looking at? Come and snatch away the cows." If I come close I will be be able to identify Jawahir because his appearance is considerably changed. (Goes close and first points to Ramnath and then to Jawahir Lall). The man has become very much thinner, and has a more dried up look than he had before. Formerly he was stout and healthy looking, his beared has also grown. His clothes are also very dirty.

Cross-examined by Mr. Garth.—I am short-sighted. But I can easily see at a distance of four or six yards. Sometimes I use spectales and sometimes I do not. I do not know a man named Raj Kumar Singh, who has a zamindari in Basantpur. I may have heard his name, but I can swear that I have never heard his name while I have been at Basantpur. I know Jawahir Lall is a patwari, but I cannot say whether he is any zamindar's patwari. I simply heard of Babu Dost Mohamed. I do not know the name of any other zamindar. I have heard the name of Maulvi Nukki, but I did not know till now that he is a zamindar at Basantpur. I do not know who is Dost Mohamed's patwari. My house is north-east of the thana; it is not in front of the thana. My house faces the east. There is no road in front of it running north and south. There is no road in front of it. The sudder door of my house faces east. I do not know the meaning of the words "sudder darwaza." I call the principal entrance of my house the "sudder deori." This is what I call it. I understand "darwaza." I do not understand "sudder darwaza." My house is about 30 yards from the gate of the thana. We were sitting towards the east. These people were going along the road. I was looking towards the east.

You could not see a road, because there is no road on the east of your house? There is no road near the house. I cannot say whether they were coming along by the maidan or by the road, but I saw them. They were on the maidan. (Map, Exhibit I, shown.) I cannot understand the map, and I cannot show where my house is on it. There is a big tree east of my house. They went between the house and the tree: they passed west of the tree. There is nothing in the compound of my house. The tree is in the maidan, not in my compound. The people did not come into my compound. My house extends to within five *laggees* of the tree. I have no compound. The edge of my enclosure is five *laggees* from the tree. This point is about one *laggee* from the *sudder deori*. The lamp we had was a hurricane lantern. It is not usual for me to be sitting out of my house with a hurricane lamp. It was not unusual for me to sit with a light. It was unusual to sit with a hurricane lantern. My servant brought and kept the lantern there. It was a sultry evening. Two or three persons were assembled there, and on that account I did not ask my servant why he brought the light and put it there. The light was put on a stool. I did not order my servant to bring the light. I had no occasion for the light. It was no useless expense. It often happens that these people come and have a chat with me. I did not know of the cattle being at the thana. I knew that it was market day. I had not heard that the District Superintendent and an armed guard were there on account of the cattle. I heard that there was something unusual at the thana. I heard a great crowd shouting *Dohai Pohari Baba ke jai, &c.* Before this I had not heard anything unusual.

On the 6th September I went to the Registry office where I work. The Sub-Registrar, under whom I work is Kazi Mahomed Abul Hashim. He was in his office. He held court there. He did not tell me anything about the cows being there, or about the arrival of the District Superintendent. There is a piece of land on the north-east of the thana and south of my house. I did not want to build on that land. I swear that I did not want to build. I swear that I never asked Jawahir Lall to ask his master to get me that land for that purpose. I never had any conversation of that kind with him. I do not know to whom that land belongs, nor have I heard since I have been there whose land it is. I never started building. None of those who were sitting with me and whom I have mentioned ever wanted to build. I was examined before the Magistrate. I was examined before that by the European Police Inspector. Before that I had not told this story to any one.

Before I was examined by the European Police Inspector I never told anybody about having recognised Jawahir Lall. The first time I was examined by the Magistrate I did not say anything about having recognised anybody. I do not know why I was recalled by the Magistrate. Before being examined by the European Inspector I never was examined by any other officer. As far as I know my friends Bindeshari, Parmanand, and Khubnarain also had no conversation with the police. I cannot suggest how the police came to know that I recognised Jawahir Lall on that night. The Police Inspector sent for me once and asked me if I knew anything, and I said yes. He did not ask me particularly about Jawahir Lall. Between my first and second examinations by the Magistrate I had no conversation with anybody about this case. I do not know whether, when I was giving my evidence for the first time, Inspector Kleyn was present in Court. I do not remember that Inspector Kleyn was sitting in Court on the left of the Inspector I do not know whether he was sitting or standing or in Court at all. I cannot say why the Magistrate sent for me back again.

Re-examined by Mr. Sutherland.—My house is separate from the Registry office. My house is to the south-east of the Registry office. There is a road running east and west of the thana. My house is about ten *laggees* from that road. On the east of my house there is not a road, but there is a lane. The gully is beyond the maidan, and beyond the gully are houses. The gully runs east and west. From where we were seated there were no obstructions between us and the road on which I saw the men coming along. We could see very well. It frequently happens that we sit in the verandah or outside of an evening and converse or play chess. When these gentlemen come to see me and converse or play chess we always have a light. We were talking for about an hour

before I saw these eighty people coming along. When I was examined the second time before the committing officer, I recognised and identified Jawahir Lall.

Mr. Sutherland.—I now propose to ask a question, to which I think Mr. Garth will object.

Mr. Garth.—The witness must go outside then.

Mr. Sutherland.—I have no objection to that; in fact I was going to propose it myself.

After the witness left the Court, Mr. Sutherland continued: It has been brought out in cross-examination that this man has been examined in the Lower Court on two occasions, and that he did not name Jawahir Lall the first time. Then he was asked in cross-examination "can you give any reason why you were examined a second time"? And he said he did not know why he was recalled. Now I propose to ask him if the reason of his being recalled by the Magistrate was that the police officer who first examined him in court did not ask him as to whom he identified in the crowd of eighty whom he saw.

Mr. Garth.—I object. In the first place he might not know, and in the second place it is not a fact. That I submit is not a fact, and it ought to be assumed in favour of the accused.

Mr. Sutherland.—If he says I do not know, I will ask the Court to allow me to put in the note which the committing Magistrate has appended to the end of this man's deposition.

Mr. Garth.—I shall object to that very strongly.

Mr. Sutherland.—Your Honour cannot avoid looking at it. It is on the record.

The Judge.—I cannot avoid looking at it, but you cannot put it to the assessors unless it is properly proved. I do not see how it can be used as evidence. If you want to use it as evidence you must put Mr. Lang into the box.

Mr. Sutherland.—I shall ask your Honour's permission to recall the Police Inspector to prove the handwriting of Mr. Lang.

The Judge.—That is not a part of the depositions.

Mr. Sutherland.—If I can prove that it was made by that officer, I submit I can put it in.

The Judge.—Under what section can you put in a note made by a Magistrate?

Mr. Sutherland.—In the same way as I would put in a letter from any person, by calling a man to prove the handwriting.

The Judge.—You must not only prove that it is in his handwriting, but you must show that what he has there stated is correct. It is an expression of opinion by the Magistrate.

Mr. Sutherland.—I submit it is a great deal more than an expression of opinion.

The Judge.—The words used by the Magistrate are "would seem." I do not see why you should not call Mr. Lang. He will be the best person to let us know what that note means, or how he came to have that knowledge which he has put on the record.

Mr. Sutherland.—It is shown on the very face of the deposition that certain questions could not have been asked him. The Sessions Court should have an explanation on that point which the witness cannot give, namely, the reason why two statements were taken from this man and the other witnesses who will be called and who were sitting with him at the time.

The Judge.—If you want to put that note in, you must examine Mr. Lang and submit him to Mr. Garth for cross-examination. You see Mr. Garth objects to its going in.

Mr. Garth.—If he wrote a letter to a friend saying in it "all these men are guilty," I submit that letter would be just as admissible as this note.

Mr. Sutherland.—That would be purely an expression of opinion in every sense inadmissible.

The Judge.—He says "it would seem"—would not that be an expression of opinion?

Mr. Sutherland.—It is only a careless way of expressing himself.

The Judge.—I do not see how it can go in simply by proving the handwriting. It seems to me we would be left in the same position as we were in before after proving the writing. It would also be necessary for you to show that it is correct.

Mr. Sutherland.—It is on the record, and it clearly goes to show that such a question was never asked, and then Mr. Lang said: "Very well recall the witness." It is the explanation given by Mr. Lang himself for recalling these witnesses.

The Judge.—How can it be evidence by itself? If you wish to make it evidence, you must call Mr. Lang and submit him for cross-examination.

Bindeshari Parshad, examined by Mr. Sutherland, said:—I am the muharrir of the Basantpur Registry Office. I saw an unusual occurrence in September last. I saw about eighty men running towards the thana. I was seated at the house of Ramattar Prosad, the head-clerk of the Registry Office at that time. This was on the 6th September. It was an hour or an hour-and-a-half after sunset. I recognised Jawahir Lall, Bhagwan Lall, Misry Sahu, and Kissun Prosad. These people are residents of Basantpur. I know them previously by name as well as by their features. These people were about one or two *laggees* off when I recognized them. They were saying as they went along, *Chullo dauro, kya dekta ho, gye cheen lo* (Go on, run. What are you looking at? Snatch away the cattle). Besides us there were also Permanand and Khub Narain who saw these people.

The four men I have named had *lathies*, the rest of the crowd also had *lathies*. There was a lantern where we were seated. That is Jawahir Lall (identifies him).

Cross-examined by Mr. Garth.—I have known Jawahir about eight or nine months. I have known him for about the same time as Ramattar. I came to know him in the ordinary way, having seen him coming and going about not in any particular manner. I have been at Basantpur for about ten or eleven months, but Jawahir Lall is a resident of Basantpur. I came to know him well during the last eight or nine months. I have seen him going to and coming from the market, and that is how I came to know him. When a person comes to a place, he does not get acquainted with all the people there at once. I asked him his name, and he told me. We were going along the road when I asked him his name.

I have never spoken to Ramattar about Jawahir Lall, nor have I ever taken his name in Ramattar's presence. I have not heard any conversation with Ramattar about this case. We live in separate lodgings. When we lived at Basantpur we worked together and met frequently. I used to see him daily, generally in the evening. I do not remember having used the name of Jawahir Lall, in conversation. I know that we are here to give evidence against Jawahir Lall, but we have never talked about the matter. I have never spoken to anybody about the case. I have no leisure from my business to talk to anyone. I work from 10 A.M. till 5 P.M. I have no time in the *interim* for conversing with my friends. I have spoken to Ramattar several times. Ramattar and Parmanand and Khub Narain are all living together. We have never spoken together about this case. I have never given evidence in any other case before this. I cannot say if Ramattar, Parmanand, and Khub Narain have ever given evidence before this.

These people whom we saw were running along the road which is about two or three *laggees* from the "sudder darwaza" of Ramattar's house. There is also a tree on the north of the road. The tree is on the north-east corner of that house. The tree is near the house; it is a very large tree. It throws no shadow on the *sircari* road. The road is two *laggees* from the tree.

The Court then rose for the day.

The 8th December 1893.

The further trial of this case was resumed this day (Friday, 8th December) before H. W. Gordon, Esq., C.S., District and Sessions Judge of Saran.

Bindeshari Pershad in further cross-examination to Mr. Garth said: These people were going along hurriedly. I am not acquainted with all the people in Basantpur, but I know a good few (*thora bahut*). I know a great many people there by their features. I heard the noise and hid myself in the Registry office. Half an hour elapsed from the time of my hearing the noise till the time I went and hid myself. During that time we, who were sitting together, held no conversation; we heard the row and went and hid ourselves. The noise was heard about half an hour or three-quarters of an hour after I saw these people going past. When I saw them going past, I thought they were going to snatch away the cows. They were making a noise going along. I was frightened at the *hulla* or noise these eighty people were making as they went along. Then I ran away and went and hid in the Registry office. I waited a little and then ran away. I first got frightened and then ran away. I do not remember which of them was the easternmost of these men. I cannot say who was in the middle. These men were on the north of the crowd. When I was first examined by the Magistrate, I did not say anything with regard to recognizing any of these eighty men.

Re examined by Mr. Sutherland.—When I first hid in the Registry I heard a noise of *dohai Pohari baba ke dohai Mohabir ke.* The noise I then heard appeared to be made by a large crowd. I was about half an hour in hiding, during the whole of which time I heard a noise. When first examined by the Magistrate I did not identify any one, but I was examined a second time. On the second time I was asked if I had recognized any one, and I said I recognised Bhagwan Lall, Misri Sahu, Jawahir Lall, and another man whom he named. The first time I was examined I was not asked if I could identify any of those men whom I saw.

To the Court.—I did mention this to the European Inspector of Patna.

Mr. Garth.—The European Inspector was here, and the prosecution did not call him, the best evidence on this point would be the evidence of Mr. Kleyn, but the prosecution do not call him.

The Judge.—I quite agree with you there, you can comment on it when the time comes.

Mr. Sutherland.—Mr. Kleyn was cited as a witness by the defence. He was not a witness on behalf of the prosecution, and the defence told him he would not be wanted, and he was allowed to go.

Khub Narain examined by Mr. Sutherland said:—I write deeds. I write documents for private persons and also for Government. The public documents which I write are in the Basantpur Registry office. In the same *dehra* (house) as I live in, Ramattar Pershad also lives I have been at Basantpur since January 1893. In September last I saw a (*bulwa*) riot case. I saw about 70 or 80 men going along towards the thana, from the east to the west. These people went from the front of my door, which was on the east. They went from within a *laggee* from us and had *charries* (sticks) in their hands. They were saying *thana men chullo gye lana wasthe* (come to the thana to take the cattle). I recognize Jawahir Lall, Bhugwan Lall, Sawdagur Sing, Misri Sahu, Parmeshwar Sahu, Mohesh Sahu, Harihar Lall, Kali Sunkur, and Sita Ram. These people are residents of Basantpur. This occurred on the 6th September last at about 7 P. M. I had known Jawahir since I was at Basantpur. The others I have named I also knew previously. We were sitting outside on the maidan when I saw these people. There was a lantern, and with the aid of this light I had no difficulty in recognizing these men. The light was on a *chowki* or *tuktaposh*, which was spread on the ground. Along with me were Bindeshari Pershad, Ramattar Pershad (and another man whom he named). I heard a noise from towards the thana; they were taking the name of their *Deotahs*, and crying out for the release of the cattle. They were giving *dohai*. I hid in the Sub-Registry office for about two hours I heard the noise the crowd was making, and I also heard the sound of bundooks while I was hiding. This is Jawahir (identifies him after a little hesitation).

Cross-examined by Mr. Ghose.—I have no friendship with Ramattar. I live with him because there is a scarcity of houses. I did not know him before I went to Basantpur. I am not a Government servant. I get my fee from whomever I write for. Those who go to register their documents have them written by me and pay me my fees. I also write *sarkari* papers when any one

in the Registry office goes on leave. I do extra work. The Sub-Registrar's name is Abdul Hussain. He lives in the place where the office is; where I live and the house in which the Sub-Registrar lives are separated by the house of a bunnia called Babulall. The Sub-Registrar was at Basantpur on that day, and he has been there all along since the institution of this case. On the east of the thana there is a piece of land; neither Ramattar nor I ever wished to build on that land, which belongs to a zamindar whose name I do not know. I do not know a zamindar named Raj Kumar Sing. I never wrote any documents for him. I know Jawahir Lall, who is patwari of Basantpur. I do not know that Jawahir Lall is the patwari of the zamindar whose land is near my house. I have often conversed with Jawahir, whom I know since January, and whom I have frequently met in the road. Neither I nor Ramattar ever spoke to the prisoner Jawahir to get us that land for the purpose of building on it. I and Ramattar belong to the same caste. My home is at Pipra, which is 6 *cos* from Basantpur, where I have no relations. I went to Basantpur myself. When I went there first I took lodging and lived there for two months. I have no family. I changed my lodging. It was small and uncomfortable. Ramattar and I mess together. I was examined before the committing officer. I did not say to him that I hid myself in the Registrar's house on hearing the noise. I remember that I hid myself in my own house, and not either in Babulall's or the Sub-Registrar's house. I did not say this with regard to myself, but with regard to the others. I did not tell the Sub-Registrar what I had heard or seen. I told the European Inspector at the thana what I had heard and seen. This was about four or five days after the occurrence. A peon called me to him. Before this I had not told anybody. I was at Basantpur on the 14th September when Ramattar and Bindeshari were examined. They went on that day from the *dehra*, and I saw them going to the cutchery with a constable who came to call them. They did not on their return say anything to me with regard to their evidence, and we had no conversation on the subject of the occurrences of the 6th. I had no conversation with any one with regard to these matters before I was examined. I do not know if the Magistrate went into the Registry office about this time. Before I was called before the Magistrate, I do not know that any of the police officers went into the Registry office or to my *dehra* to enquire into this matter; as far as I know no one went. I was examined in the grove near the dâk bungalow. The European Inspector to whom I had made a statement was not present with the Magistrate when I was examined in the grove. On the same day Ramattar and Bindeshari and Parmanund were also taken there, but we were taken separately. They were not examined in my presence. My statement was taken down by the Inspector on the 10th or 11th August. Bindeshari's *dehra* is east of mine, about two or three *laggees* from mine. The *dehra* of Ramattar is in the same direction and about the same distance. We had a light. It was dark. We were sitting on the *taktaposh*. The noise was such that the Sub-Registrar could also have heard it. I did not see the Sub-Registrar coming out of his house or looking at the *gulmal*. Beyond the maidan where we were sitting is a tree, and beyond that another maidan, beyond which are the houses of shop-keepers. The tree was about two *laggees* from where we were seated. The shop-keepers' houses are two or three paces from the tree. The people passed on the same side of the tree as I was. They carried no torches. I came out of my hiding place after the disturbance was over. I met no one that night. The very words the men used were "*Thana men chullo gye lena ko.*" I said this before the committing Magistrate. What I am saying here is correct My deposition was read over to me in the lower court. I earn about Rs. 25 or Rs. 30 per month.

Re-examined by Mr. Sutherland.—I did name the persons whom I recognized when I was examined by the European Inspector, and whose names I have mentioned again to-day.

Parmanund Sahu, a dastawiz writer, examined by Mr. Sutherland said.—On the 6th September last I saw a disturbance. I was at that time, about 7 P.M., seated at the *dehra* of Ramattar's house in company with Bindeshari Pershad, Khubnarain and Ramattar. We were seated just outside the verandah of the house, and there was a lamp near us. We saw persons going in the direction of the thana; they were saying "what are you looking at?—*makabilla*

ho gyle, chullo gye cheen latha jao." I recognized Jawahir Lall, Bhugwan Lall, Hurryhur Pershad, Mohesh Sahu, Parmeshwar Sahu, Kari Bunniah, Kali Sunkur, Seta Ram Rawniar, and Sowdagar Kunwar. These people are residents of Basantpur. When I saw them they were about two *laggees* distant from us. I had known these people whom I have named previously. I had known Jawahir for about 11 months. There were shouts from the thana of *gye cheen lo, jay Mohabir ke, jai Pohari Baba ke*, &c. When I heard this noise I ran away to the Registrar's house and hid myself. When I was in hiding I heard these noises and also the noise of "bundook." This is Jawahir Lall (identifies him).

Cross-examined by Mr. Ghose.—My house is in the jurisdiction of Sewan thana, about eight or nine *cos* from Basantpur. I am not related to any of the other three people with whom I was on that evening, but we are all of the same castes—*Kayasts.* I know that Dost Mahomed is a zamindar. I do not know any other zamindars. I do not know that Jawahir Lall is Dost Mahomed's *patwari.* I know from hearsay that Jawahir is a *patwari.* The Basantpur Sub-Registry office was opened from December 1892. Ramattar did not wish to build on the land near his house. The cutcherry and the Sub-Registrar's house are in the same compound in the same building. When I hid, the Sub-Registrar was in his house. The Sub-Registrar was also in the room where we hid ourselves. This was a private room. He came into the room at the same time as we did. Besides us and the Registrar, there were Amir Ali, the Excise Daroga, Jamaluddin, the stamp vendor, in that room.

They also entered at the same time. Jamaluddin's house is at Saraya. There is only one door to that room, and it faces north. Only myself, Bindeshari Pershad, and Ramattar went to that room. Khub Narain remained behind. I did not see where the Sub-Registrar came from. We met him at the door. They—Aminali and Jamaluddin—entered the room just a little before we did. We were in that room for about half an hour, the door being closed from inside as well as from outside, a servant having closed the door from the outside. We had no conversation of any kind, we were so frightened. We were perfectly quiet (*chup chap*). There was a light in the room. When everything was quiet somebody inside asked the servant to open the door. The door was opened, and we left, each going to his own house. I gave my deposition before the Magistrate. I said before him that all of us ran away and hid ourselves, but I did not mean all four of us. I was not asked which of us. I was examined at the thana about three or four days after the occurrence. Before this no one asked me, nor did I tell any one of what I had seen or done. The Magistrate did not go to the Registry office, as far as I know, for any purpose. Neither did any police officers go to the Registry office to investigate the case. A European Inspector from Patna examined me. When I was examined by the Magistrate this inspector was not present. Bindeshari and Ramattar were examined a week before I was examined, more or less. I was examined after them, that is all I know. I knew on the day they were examined that they were being examined by the Magistrate. We frequently sit together in front of the verandah. I do not remember whether I went to Ramattar's *dehra* in the evening of the day he was examined before the Magistrate. Between his examination and my examination we had met at his place,—it is very probable we met. Besides that, we met every day at the office. They never told me anything about this case, or about their own evidence in this case. There was no enmity of any kind between Jawahir and Ramattar. The pipul tree was eight or nine *laggees* from where we were. On the other side of the tree, about two *laggees* or one *laggee* from it, there are houses. The eight people passed between us and the tree and went towards the south. People also came along between the other side of the tree and the houses beyond it. We were seated when they passed. We ran away immediately after seeing these men. Jawahir Lall was in front when I saw them; the others were close together behind.

Re-examined by Mr. Sutherland.—My *dehra* is about one-and-a-half or two *russis* from Ramattar's *dehra*, and on the east of it.

Enayat Hajam examined by Mr. Sutherland.—I know Ajudhya Rai of Pusnowli (identifies him). I went about three months ago to see him. My house is about half a mile from his. He had a *phusrie* (boil) on his cheek (points) which I lanced. Some matter came out and then a *churra* (shot). I asked him where

the shot came from, and he said, "I went to Basantpur and got shot there." Dwarka Singh, the brother of Ajudhya, took me to him. About five years ago I attended a little boy at his house for a boil. I heard on a Thursday at the Maharajganj Bazar that a riot had occurred on Wednesday.

(This was objected to by Mr. Ghose, but the objection was overruled.) I went to Ajudhya on the following Saturday and extracted the shot. I saw him again when I went to give my deposition before the Magistrate. Previous to this I saw him at the thana. I saw him sitting there and I went there. He had some conversation with Ajudhya, and then the jamadar questioned me, and I told the jamadar that I had extracted a shot from his cheek.

Cross-examined by Mr. Ghose.—I was passing by the thana and I went inside to "salaam" the inspector. Nobody called me. Before I entered the thana I did know that Ajudhya was there. I go often to the thana to "salaam" the jamadar. I am referring to the Maharajganj thana. I did not know that the jamadar Ali Akbar was in the thana. There were a number of people present at the thana at the time—about 30 or 60 people belonging to the village. The jamadar did not take security for my attendance before the Magistrate. He told me "that on Tuesday you must be present at Sewan."

I went to Sewan. I was examined at Basantpur before the Magistrate three days after I was at the thana, and not ten or eleven days after. I was examined only once before the Magistrate. Before I told the jamadar about lancing the *phusrie* I did not speak to any one about it. When I heard on Thursday about the riot at Basantpur, I did not hear that shots were fired into the mob. I heard that sticks were used. No persons were arrested in my village in connection with the riot, subsequent to my hearing of the riot. I heard at the thana from Ajudhya that people were being arrested for having taken part in the riot. I heard a rumour on Thursday in the Maharajganj Bazar that there had been a riot. I did not hear this from any one that I knew. The bazar at Maharajganj is less than half a mile from my house. I am the only operating surgeon in the village (laughter). I do not know who the boy was that I attended five years ago in Ajudhya's house.

I said to the committing Magistrate that I went to attend Ajudhya's *larka* five years ago. Ajudhya told me without any hesitation that he had received the shot at Basantpur. He told me not to tell any one, and I said, "What reason have I to tell any one, but if the sarkar asks me I will tell everything." I did not get any payment for the "operation" (laughter), and I went to the thana. Ajudhya told the head-constable that the edge (*keyn*) of a bamboo had caught him in the cheek and caused the injury. The jamadar first asked me saying, "this man says that the wound was caused by the *keyn* of a bamboo, see if you recognize him." I replied, "I am the man who lanced the wound and extracted the shot." This closed the conversation. Ajudhya said nothing in my presence. I know Inspector Gyatri Babu. I saw him at the thana that evening.

He did not say anything to me. Dwarka, Ajudhya's brother, only told me I was wanted to lance a boil. The jemadar did not take down my statement. In Pusnowli I did not cultivate any land under Ajudhya, nor did my brother.

Re-examined by Mr. Sutherland.—My house is less than half a mile from Maharajganj thana.

Mr. Sutherland.—I call no more witnesses, but I will tender a few of them for cross-examination. The first I will tender for cross-examination is Khyrat Ali. I cannot put him forward as a witness of implicit truth, and therefore I did not call him myself, but having said I would call him (before I received certain instructions) I now tender him for cross-examination.

Shaik Khyrat Ali, formerly Sub-Inspector of Basantpur, cross-examined by Mr. Ghose, said.—I wrote the first information in the Bala case. This (shown) is it.

Mr. Ghose.—I tender it (admitted and marked.)

Witness.—The first information was written on the 1st September at Khawaspur. It is a Muhammadan village. I investigated this case. The District Superintendent came up during the investigation on the 5th September. I do not know if he took the deposition of any witness on that day. I do not know if he did record any depositions on the next day. He did not do anything

in my presence. I saw the District Superintendent on the 6th at Basantpur. Before the 6th I took the depositions of witnesses in the Bala case. I took statements from the 1st to the 5th. They were entered in the diary. That diary is not here. I cannot say whose evidence I took, or on what days. I can only remember that I examined Mossafir Butcher on the 2nd.

I knew the names of the witnesses, but cannot remember them now. This was furnished to me. On the 5th all the witnesses had not been examined. I cannot remember what was the total number of the witnesses whose names were furnished me. (Looking at the record in the Bala case) Japus, Budally Muddru, Khukkur, Musully, Kurmally, Phududdy, Majid, Jhanju, Hussein Bux, Dahu, Burria, Faujdar, these are the names of the witnesses. The witness Mossafir is not named in the first information.

Re-examined by Mr. Sutherland.—I have been in the Chupra line since the 20th September.

Mr. Sutherland then tendered Jowad Ali, Dudraj Burhi, and Dulsinga Rai for cross-examination, allowing Mr. Ghose to call them in any order he liked.

Mr. Ghose.—Mr. Boileau was examined in the lower Court, and he has not been called in this Court or tendered for cross-examination.

Mr. Sutherland.—I do not call him because he only speaks to the fact that Gunga Dass, one of the discharged accused, was told not to do certain things. I do not call any of the other witnesses, and I do not think it necessary to tender them, but if my friend would like to have them I will tender them.

Mr. Ghose.—I do not desire to cross-examine any of the other witnesses.

Mr. Sutherland.—Then that ends all the evidence I have to put forward. Then there are the statements of the accused, which will have to be read to the assessors. I put them in.

Mr. Ghose objected to their going in, contending that they were not admissible.

The Judge.—You cannot object to their going in if they are recorded according to law.

Mr. Ghose contended that they were inadmissible on two grounds: they were not in the form of question and answer as required by section 364, Criminal Procedure Code.

The Judge.—The section says that if any question is put it must be put on the record. It does not say that the whole of such examination must be made by question and answer. It simply means that every question put to an accused must be put down in the record.

Mr. Ghose.—My next objection is under section 209 that some of the statements were taken on the 13th September before all the witnesses for the prosecution had been examined. This was done in the absence of counsel, and I am told that the muktear of the accused protested. There is a stage at which all this is to be done. It must be after all the witnesses for the prosecution have been examined. It is certainly not fair to the accused to ask them to explain the circumstances disclosed by the prosecution before all the prosecution witnesses are examined.

After some further discussion His Honor said:—

Mr. Ghose, on behalf of the accused, objects to the admissibility of these statements made before the Magistrate on two grounds: first, that that examination was not in the form of question and answer as required by section 364, C. P. C.; and secondly, that the examination of the accused was taken by the Magistrate before all the witnesses for the prosecution had been examined. This he contends is in contravention of the intentions and objects of section 209, C. P. C. Now it seems to me that neither of these reasons can be accepted: all that sections 363 and 364, C. P. C., require is that the whole of the examination of the accused, including every question put to him and every answer given by him, should be recorded. But it is not imperative that the whole of such examination should be taken in the form of question and answer; and as regards section 209, C. P. C., I think it must be read with section 342, C. P. C., under which the Court may at any stage of the enquiry or trial put such questions to the accused as the Court considers necessary. The objection taken is accordingly overruled.

Mr. Ghose wished to put in the judgment in Hira Ahir's case *vs* Parmeshwar Singh.

Mr. Sutherland objected to its going in at all, and claimed a right of reply if it was put in, because he submitted it would be a substantive piece of evidence.

His Honour ultimately ruled as follows:—

Mr. Ghose tenders in evidence the judgment of the Joint-Magistrate of Sewan, dated 7th July 1893, in the case of Hira Ahir *vs.* Parmeshwar Singh, on the understanding that, if this judgment be admitted in evidence, it will not give the Crown a right of reply. . I am of opinion that this judgment is a piece of substantive evidence which, if now put in on behalf of the accused, will give the Crown a right of reply under section 292, C. P. C. Mr. Sutherland for the Crown objected to the admissibility of the document altogether. I think it is inadmissible under the Evidence Act. Mr. Ghose does not wish to give the Crown a right of reply. He, on the view I have expressed, declines to put it in.

The statements of the accused were then read out to the assessors.

All the accused through their counsel said that the defence would be disclosed later on; that they had nothing further to add to what they had already stated; and that they would not call evidence.

The Court then adjourned till Monday, when the exhibits in the case will be read out to the assessors before Mr. Sutherland begins to argue the case on behalf of the Crown.

The 11*th December* 1893.

On the hearing of this case being resumed to-day (December 11th) before H. W. Gordon, Esq., C.S., District and Sessions Judge of Sarun, Mr. Sutherland addressed the assessors from about 12 o'clock to 3-30 P.M. He said: Since none of the accused have called any witnesses, the last and only duty left me is to sum up to you the case for the Crown. Whatever opinion you have to form will be exclusively on materials furnished by the prosecution, with the exception of a few documents put in by the defence in cross-examination. The witnesses called by the Crown have had their evidence tested by a very rigid cross-examination. I wil call your attention to the two cardinal principles which guide the trial of all criminal cases. The first is that the prosecution must prove its case—that they are bound to call all such witnesses who will give important information on material points, and if any of these are deliberately not produced, you can infer against the prosecution. This does not mean that if there are fifty eye-witnesses to an occurrence that all must be produced, or that if only twenty are examined that you are entitled to infer against the truth of the prosecution on the ground of the non-production of the remainder. In this case there is no suggestion made in the cross-examination that the Crown have kept back any important witness. Some cross-examination was directed towards what Mr. Boileau did or did not do on the morning of the 5th or 6th September, but those questions referred to Mr. Boileau's action regarding the Bala occurrence. There is nothing suggested that I know of that Mr. Boileau could throw any important light on the occurrences of the 6th September, which forms the subject-matter of this trial. He was not an eye-witness to the occurrence, nor is there anything suggested that he could depose to which would throw any light on the case after the occurrence was over. Some questions were also directed by Mr. Ghose in his cross-examination of some of the witnesses who spoke only against Jawahir Lall, one of the accused, as to whether the Registrar had visited the Registry office after the occurrence, and whether the Sub-Registrar was not a Muhammadan. Whatever be the reasons why these questions were asked, there is nothing suggested that the Sub-Registrar was either an eye-witness to the occurrence, or that he knew anything about it which would throw light on the subject. On the contrary, the witnesses cross-examined on this point swear that the Sub-Registrar was concealing himself in the Registry office along with these witnesses during the time that the riot was taking place. The second principle I refer to is that you are not entitled to draw any inference against the accused for not having called any witnesses, that is to say, that not having called them you must infer that if called they would speak

against the defence. Nevertheless, I am entitled to draw your attention to the fact that no portion of the case for the prosecution, with reference to all that transpired at Basantpur on the 6th September, has been rebutted by a single oath. Beyond this I do not feel I am entitled to ask you to go any further. Mr. Garth will be perfectly entitled to rely on either the weakness of the prosecution or upon his cross-examination having destroyed the strength of it, and from what he has elicited to ask you to adopt one of three courses, either to hold that the whole case for the prosecution is false, or that material portions of it have been supported by untrustworthy evidence, and that therefore you cannot rely on other portions of the case not supported by false evidence, or that, having regard to all the facts and circumstances, the case in all the material points bristles with doubts, that you as reasonable men ought to give the benefit of these doubts in favour of the accused. Having drawn your attention to these preliminary matters, I will endeavour to place before you the points which arise for decision with reference to the three charges on which the accused have been on trial during all these days.

Mr. Sutherland here formulated the points on which the assessors would have to give their opinion with reference to the three charges of rioting, dacoity, and assembling for the purpose of committing a dacoity, laying stress on the point that the crucial question with reference to these charges was the evidence of the presence of the accused at the actual occurrences of the 6th of September.

Continuing he said.—Having drawn your attention to the actual points for decision, there are other matters on which evidence has been given which, though relevant to what may be called, borrowing a Civil Court expression, the real issues of the case are matters outside these issues—matters which could not possibly be avoided in my opening, and on which evidence had to be produced. Although these matters have to be taken into your consideration, you must not attach undue importance to them, so as to have your eyes blinded to the essential points in the case. I cannot premise all the arguments that Mr. Garth will urge before you so as to answer them by way of anticipation: there are some arguments that I can for a certainty predict. These I will answer afterwards, in their proper place. At present I wish to answer two points which Mr. Garth will urge before you, and which, though relevant to the issues, are outside them in order that I should clear the ground before you for my summing up of the evidence on the points essential to the case. The two points I refer to are, first, the transaction between Nathu and the Commissariat as to the purchase of the cattle; and secondly, the occurrence of the 31st of August known as the Bala occurrence.

With reference to the purchase transaction, Mr. Sutherland pointed out the contradiction between Nathu's statement and that of the meat agent with regard to the advance given to Nathu of Rs. 900 for the purchase of the cattle.

Counsel then urged: In what way does my learned friend intend to utilise this contradiction, and how does the contradiction affect the material portions of the case with reference to the occurrence of the 6th September? If you are satisfied that Nathu and the other butchers were in possession of 131 head of cattle on the 31st August, it does not matter whether Nathu got an advance or not, or from where he got the money. If the defence was that the butchers had either stolen the cattle or had taken forcible possession of them from Hindus, hence the Bala occurrence, the contradiction would be important, as it could be urged that this Commissariat transaction was invented by Nathu to account for illegal possession of cattle and the invoking of police for the protection of the cattle. But this is not suggested; that Nathu and the butchers were in possession of cattle which they intended for the Commissariat is proved beyond a doubt. Nathu mentions this not only in his first information, but he has all along treated the cattle as intended for the Commissariat. You have the evidence of Elahi, that out of the 120 head of cattle the Commissariat purchased 80 for Rs. 640, and that he received the money from the Commissariat officer. The meat agent also proves that this money was paid in his presence. Unless this were a fact, there is no suggestion as to what has happened to the cattle.

The only reason why the prosecution lay stress on the cattle being Commissariat cattle, or intended for the Commissariat, is to prove that the motive

for wishing to forcibly seize the cattle which the Hindus must have known was meant for slaughter, based on that religious feeling or sentiment which I mentioned to you in my opening. I hope I have made this matter clear to you, that all throughout Nathu and the butchers have alleged that the cattle were for the Commissariat. Nathu says so in his first information, and unless it were a fact he would hardly have invented such a story, and from this position he has never resiled.

As to the second matter, the Bala occurrence.—You will bear in mind that Nathu has sworn here that he saw Parmeshwar Singh and Ramnath Sahu on horseback at the Bala occurrence, and that they gave the order to beat and take away the cattle. The defence have shown that Nathu in his first information does not name these two accused as having been actually present at the time. The defence have also shown that the summonses issued on two of these accused by the Inspector on the 5th September is headed Empress *v.* defendants unknown. From these facts my friend will ask you to draw two inferences: that Nathu having falsely sworn to two of these accused having been present at the Bala occurrence, his evidence on other important matters is unworthy of credit; and secondly, his identification of Parmeshwar and Ramnath by Nathu on the afternoon of the 6th September was a sham and brought about by trickery, the suggestion being that these two accused and Rajmun were at the thana on the morning of the 6th September, and that somebody had pointed them out to Nathu. Assuming that my learned friend satisfies you on these two points, how can this affect your opinion as to the truth of the presence of those three accused persons at the occurrence of the 6th September, proved by the evidence of the police officers who were not eye-witnesses to the Bala occurrence? You are not trying the question as to whether these three persons are guilty of the riot at Bala on the 31st of August. The utmost that my friend is entitled to ask you is, that Nathu is not a witness of truth, and therefore you cannot believe him where he implicates these two accused persons as to the occurrences of the 6th. But assuming, for the sake of argument, that Nathu's identification of these two accused was brought about by trickery, it does not follow that the Inspector and Akbar Ali, the head constable, were cognizant of it. Any one out of the number of people who were at the thana on the morning of the 6th September, assuming that trickery was done, would have pointed out these two accused persons to Nathu, without Gyatri, the Inspector, and Akbar Ali having any knowledge of it, and these two police officers were duped. You are not entitled to infer against the *bonâ fides* of these two police officers regarding the identification, unless there is evidence on the record that these two officers were engaged in this piece of trickery, if trickery is the only theory by which you are asked to account for Nathu's identification of these two accused. I will now sum up to you the evidence regarding the Bala occurrence. That an occurrence of the nature spoken to by the witnesses did take place at Bala there can be no shadow of a doubt, as everything points to such an occurrence having taken place. Nathu's first information reported in the diary put in by the defence, and his information of the 1st September, substantially agree with what he has stated here, namely, that a number of persons did come, that there was an interference with the cattle, and that it was stated by the people who came that these things were done by the orders of these three acused persons—Parmeshwar, Ramnath and Rajmun. At present I am not dealing with the question as to whether these three accused persons were actually present or not, but only to the fact that an occurrence such as that described did take place. Nathu in giving his first information could hardly have imagined all that he had stated; nor could he have been stating to the police that which he had dreamt of the night before. Unless such an occurrence did take place, you cannot account for many things that happened; for instance, the fact of the cattle having been brought to the Basantpur grove on the 2nd September and kept there till the evening of the 6th, when they were brought to the thana enclosure. It was not suggested in cross-examination that the cattle were brought to Basantpur for any other reason than that which the prosecution allege. You have also the arrival of the armed guards on the 5th of September at Basantpur, and shortly after the arrival of Gyatri and the District Superintendent of Police; you have also the fact that these three

accused persons were summoned on the 5th to appear at the thana on the 6th as persons who were concerned in the Bala occurrence.

From the cross-examination of the butchers—Nathu and Jhanju—it is not suggested that there was no mob or interference of any kind with the cattle, but that a number of people did gather and that some occurrence did take place, but bearing a different complexion to that put upon it by the prosecution.

Mr. Sutherland drew attention to the following passage in the cross-examination of Nathu. "The mob did not offer to purchase the cows from me. The mob did not say they would buy the cattle, and that Parmeshwar and Ramnath would pay the money." This passage from Jhanju's cross-examination was then read out: "Did the men you have spoken of offer to buy the cattle? No, none of them did."

Counsel then went on to say:—You see that in the cross-examination there is a clear indication that a number of persons did turn up and offer to buy the cattle, and that the persons who were to pay for the cattle were Parmeshwar and Ramnath. I think you have sufficient evidence to hold that the occurrence spoken to by the witnesses for the prosecution did take place. My friend's suggestion is not that these people came as an unlawful assembly as we allege, but simply to make *bonâ fide* offers to these butchers for the purchase of the cattle; but still it goes very close to show that something did transpire. One thing is perfectly clear, that nothing else has been suggested to show how it was that the butchers did not accept this offer, or as to whether there was any further treaty entered into with them in regard to the sale of the cattle. Beyond this mere suggestion by the defence, there is nothing else in the evidence on which you can hold that the assembly that collected on the 31st of August was other than an unlawful assembly.

The next question for you to consider is whether Parmeshwar, Ramnath and Rajmun were not present at the Bala occurrence. I must candidly tell you that the evidence on this point must be looked at with considerable care and caution. In the first information of Nathu to Hazir Ali, although he does not state specifically that he saw these two men on horseback—in fact there is no mention of horses at all—still he very freely mentions the names of these persons whom the mob represented as being the persons responsible for all that had happened. Well, it may be that these two accused persons were seen by Nathu on that day, but he was unable at the time when he gave his first information to say that this was Ramnath and this was Parmeshwar. In his first information, although he does not specially name them as being present, yet he says "I do not know the names of those people who have snatched the cattle, but I would recognise them by their faces. Now it is quite possible that he did see them, but he was unable to tell the police officer which was Ramnath and which was Rajmun. My friend, no doubt, will make a great point of Nathu having stated in Court that these two men were on horseback, when there is no mention made of this in the first information. Whether this is an embellishment or not, you will have to consider this matter in judging the truth of Nathu's statement as to whether he saw these men at all. Now Jhanju has positively sworn that he saw these two persons present at the Bala occurrence. There is no statement of Jhanju's produced or asked to be produced which would go to show that he had not named these men, and it is not necessary for the prosecution to produce in evidence the statements of every witness examined before the police. My friend has not been backward in asking for the production of papers or documents to be put in with a view to contradict the prosecution witnesses.

Mr. Garth.—I have asked for the production of the statements of every witness examined in the Bala case.

Mr. Sutherland.—I did not know that.

Mr. Garth.—I distinctly mentioned that in my petition. I asked that the District Superintendent of Police should produce them.

I have challenged that throughout, and not a single paper with regard to witnesses' statement has been produced.

Mr. Sutherland.—(After looking at the petition)—It is somewhat ambiguously worded. It is not clear whether the District Superintendent was to furnish a return of the names of the witnesses examined and when examined, or

whether the statements themselves were asked for. I think these statements should be produced even now.

The Judge.—These statements are in the diary probably. In any case I think the accused should be allowed to see these statements. I, at all events, can look at the diary.

Mr. Sutherland in continuation of his address said:—Rahmut Ali has sworn that he saw Parmeshwar, Ramnath and Rajmun at the Bala occurrence, and that he knew Ramnath and Rajmun previous to the date of occurrence. As Rahmut Ali says he was not examined by the police nor in the Bala case, but for the first time before the committing officer, you must regard his evidence with considerable care ; and if you are not satisfied with his evidence, you must give the benefit of whatever doubt arises in your mind as to the identification of these three men in their favour.

Now I will ask you to consider the evidence of Rahmat Ali and Jhanju in the light of the probability of these three accused persons being present at the Bala occurrence. Bala, the scene of occurrence, is close to Narharpur, the residence of Parmeshwar Singh, and Lucknowrah, the village in which Ramnath and Rajmun live is also close to Bala. Now the cross-examination of the butchers suggests that the mob offered to buy the cattle, and that Ramnath and Parmeshwar would pay the price. It is clear that the mob were represented as the agents of Ramnath and Parmeshwar regarding this offer, and it is clear that these two men were interested in getting the cattle. It is therefore not improbable that these two men would themselves be present on the spot, because their presence would have more effect with the butchers in inducing them to sell the cattle than if the offer were made merely by the mob. If there was any truth in the suggestion made in cross-examination, the butchers would be more likely to be persuaded by the presence of the men who were to pay the money than by the offer of the mob who would merely say that so and so would pay the money. I wish to point out that their presence is not improbable, having regard to the facts and circumstances of the case, and especially if you believe that these three accused were at the thana on the 6th and asked for the release of the cattle on payment of the value; they had been released on bail. If you believe these three accused were so interested in the release of cattle on the 6th of September, and also in their presence at the riot of the 6th at the thana, you will see how very probable it is that they were present at the Bala occurrence. It may be argued "why have you not called Mr. Bean." My answer to that is we are not here trying the Bala case. The Bala occurrence is only a matter which you have to take into consideration as leading up to this case, but it is not a matter in which you have to decide as to whether these three persons were members of an unlawful assembly at the Bala affair. Mr. Garth in his cross-examination of one of the witnesses wanted to ask him what Mr. Bean has stated in the Bala case, and as to whether that witness had heard what the Magistrate had stated in his judgment regarding the evidence of Nathu and others. I objected to these questions, and on the Court ruling in my favour, Mr. Garth with much warmth spoke of the cruelty of the prosecution in giving in evidence the presence of those three accused in the Bala occurrence, yet not allowing him to put in evidence those matters which he had asked in cross-examination. I fail to see wherein the cruelty lies. We must be bound by the law and the rules of evidence, and if any matter is inadmissible, I have a perfect right to object to its going in. If Mr. Garth wanted to satisfy you that the witnesses as to the Bala occurrence were absolutely unworthy of credit, he could have done so by calling Mr. Bean or other witnesses, which would be the legitimate and constitutional way of doing what he wanted to do. As I have told you before, the Bala case is only an incident connected with the case that you are trying now. If you are satisfied, after what Mr. Garth will say, that these butchers have falsely stated that they saw these three accused at the Bala occurrence, then the only effect this should have on your mind is that these witnesses are unworthy of credit and nothing more.

Now we come to the question of identification, and I will deal with this now because it is connected with the Bala matter. Beyond the suggestion that these three accused persons were at Basantpur on the morning of the 6th of September, and then an opportunity was given to Nathu and the butchers to have them pointed out to the witnesses, there is not a title of evidence to support

the suggestion. Gyatri and Akbar Ali, the head constable, have in detail deposed to the way in which the three butchers identfied these accused.

Mr. Sutherland here drew the attention of the assessors to the evidence bearing on this point and went on to say: If there is any truth in the suggestion made, how is it that the three accused in the statements made to the committing officer denied that they were at Basantpur at any time on the 6th of September. Gyatri in his re-examination has sworn that at the time of the identification the accused made no objection to the way in which it was done. It is impossible to suppose that if the accused had been pointed out to the butchers before the identification took place, that they would not have known of it, and naturally would have raised objections to the inspector. But assuming for the sake of argument that trickery was employed, there is absolutely nothing in the evidence to justify you to infer that the inspector and head constable had knowledge of it or were parties to it.

From the 1st of September, up to 3 P.M. of the 6th there is nothing of importance to sum up to you except that the cattle were brought to the Basantpur grove on the 2nd and kept there till they were brought within the thana enclosure at 6 P.M. of the 6th. The evidence on this point is conclusive, and there is no cross-examination to suggest that this was not done.

I now come to the events of the 6th of September, which I divide into four heads. First, the coming of these three accused persons to the thana about 3 P.M., their being released on bail and their departure from the thana at about 5 P.M.; secondly, their return about half an hour afterwards with their sureties, the demand they made to the inspector for the release of the cattle on payment of the price, the refusal of the inspector, and their departing in anger saying "all right we are going;" thirdly, the bringing of the cattle into the thana enclosure after the departure of these men; and fourthly, their return to the thana about 7 P.M. with a mob, and the occurrence which then took place, and which is the subject matter of this trial.

With regard to the first point, the evidence is so conclusive, corroborated as it is by the entry in the diary and the production of the bail bonds, that the defence do not dispute this fact. As to the second point the evidence here is also conclusive, proved as it has been by the evidence of the police officers and the entry in the diary.

Mr. Garth said that he never disputed the fact that bail was taken from these men on the 6th of September.

Mr. Sutherland.—That may be, but I am bound to sum up the evidence all the same to the assessors. Counsel then proceeded to deal with the evidence on the point. Continuing he said: As to the second head, the evidence of the police officers and the entry in the station diary are conclusive. You may take it that these facts are absolutely proved, namely, that these three accused persons with their sureties did return to the thana, demanded the release of the cattle on payment of the price, their using the significant expression that the Sadhus had not eaten for three days, the refusal of the inspector to release the cattle until the arrival of the District Superintendent and the Subdivisional Officer, and the departure of these men in a rage saying "*algha hum logue jatha hai.*" The interpretation which I put upon these words is "very well we are going now, but you may expect another visit from us."

Mr. Garth.—I do not know the language, but is that the meaning of these words? I submit that the Crown has no right to suggest a meaning to certain words which they do not bear, and which is something totally different.

Mr. Sutherland.—I do not say that those words in themselves mean what I have suggested, but I am entitled to put it to the assessors that the words used were intended to convey the idea that they intended to pay another visit.

The Judge.—You are at liberty to say that, but it is not the exact meaning of the words.

Mr. Sutherland continuing said.—The defence do not now deny that these three accused persons did return and demand the release of the cattle on payment of the price, since the cross-examination suggests that they did do so, but they wished to put a different complexion on what transpired.

Mr. Garth.—I would like my friend to point out where I have suggested that these men returned to the thana.

Mr. Sutherland.—(In referring to the cross-examination of Gyatri.) I draw attention to the following question put by my friend. "What were the exact words between Parmeshwar Sing and yourself at 5-30 P.M. of the 6th?" Mr. Sutherland then read in the vernacular the exact words given by Gyatri in cross-examination to Mr. Garth, and argued that the form of the question suggested to his thinking that the -defence implied that the three a ccused persons had returned to the thana.

Mr. Garth.—I have never suggested that these men went away and came back again.

Mr. Sutherland.—This suits my purpose just as well. The cross-examination at all events suggests that at some time during the 6th September, probably at the time the bail was taken, these three accused did demand the release of the cattle on the payment of the price. There is no suggestion by the cross-examination as to the time when this took place, and what reason is there for you to disbelieve that this took place, as the prosecution say, on the return of these three accused after they had been released on bail; especially as these facts have been so strangely corroborated by the entry in the station diary, which is a bound book with entries preceding and succeeding the entry in question, so as to exclude the possibility of the particular entry having been interpolated? Unless this conversation took place on the return of these men as stated by us, why should the police have invented this story? They would never think of doing so, if it were the fact that this conversation took place at the time of giving bail. There is nothing in the entry to give rise to any suspicion. It purports to be an entry made at or about the time the matter happened.

Mr. Garth intimated that it was his intention to throw suspicion on the entries in the station diary.

Mr. Sutherland.—My learned friend will throw suspicion on everything, no doubt. With regard to the suggestion that the three accused at some time on the 6th September, at the thana, warned the police that a row was likely to take place on account of it being a market, and the cattle being seen by the Hindus would excite their feelings, and that the three accused implored the police to be allowed to remain there that night at the thana, as they would be implicated falsely in the event of a row, I will deal with that hereafter.

With regard to the third head, namely, that the cattle were brought to the thana after the departure of the three accused, you have the evidence of the police officers and Birda Sing, constable of the guard, who brought the cattle from the grove to the thana. These facts are also corroborated by the entry in the station diary made by Akbar Ali. Having regard to what had previously happened, the bringing of the cattle into the thana was the most natural thing to do.

I have now to deal with that portion of the case which deals with the actual occurrence. Gyatri has been cross-examined by Mr. Garth, not only at very great length, but also in detail, regarding all the minor points in connection with the occurrence, and it will be for you to consider whether the effect of the cross-examination will lead you to the opinion that the whole thing is a myth, or that it is susceptible of any other interpretation, or whether the story told with great circumstantiality does not prove the case for the prosecution. I will leave Mr. Garth to take up hours of your time in discussing the evidence as to the occurrence in detail. I shall content myself only with some of the main points. You have a body of evidence as to the fact that an occurrence did take place, and of the nature deposed to, and it seems impossible for you to doubt the story put forward by the prosecution. Besides the evidence of the police officers and the first information of Gyatri recorded shortly after the occurrence, you have the evidence of Ramattar Parshad, Bindeshari Parshad, Khub Narain and Parmeshar Sahai who come only to speak to Jawahir Lall, the accused, being seen with 70 or 80 men armed with *lathis* going towards the thana at about 7 o'clock that evening, who say that after they concealed themselves in the Registry office, they heard great uproar at the thana, the particular cries of the mob, *Pohari baba ke jay*, etc., and the firing of guns. The fact that the police fired buckshot, wounding some men, one of whom subsequently died from the effects of his wounds, cannot be accounted for by any other hypothesis than that a serious attack was made at the thana, and the lives of the police were threatened.

It is hardly possible to believe that the inspector would have taken upon himself the responsibility of discharging guns, unless the occasion necessited the use of firearms. As you are natives of this country, and know best the ways of your own countrymen, it will be for you to say whether in all your experience of the police, a native police officer would take upon himself the huge responsibility of using buckshot, unless a serious attempt was made on his person and his life was in jeopardy. If you believe that the Bala occurrence did take place, and the coming of these three accused persons to the thana at 5 30 P M. of the 6th September and demanding the release of the cattle in which they have all along shown a great interest, wherein lies the improbability that matters culminated in an attack on the thana as deposed to, and in which these three accused persons were the ringleaders? That there was every probability of a row is suggested in he cross-examination of Gyatri, where the suggestion made is that Hindus we re collecting, and that these three accused persons asked for the release of the cattle on payment of the price to avert a probable row. Since it is suggested by the defence that a row was probable, where is the improbability that it did actually take place, and that it was of the character sworn to by the witness?

Mutki Rai, the accused, in his statement to the committing officer, admits that there was a large crowd near the thana, and that whilst he was there looking on, he was wounded by a gun-shot. Khedu Koeri, the accused, admits in his statement to the committing officer that he saw a large crowd who were making a great noise calling out "snatch the cattle," and that, whilst he was looking on, he was also wounded by a gun-shot. (Statements of these two accused in the vernacular read out.) I argue that these statements strongly corroborate the truth of the prosecution story.

I will now sum up the evidence to you as against each accused person who is said to have been present and to have taken part in the occurrence of the 6th September. I will deal first with the evidence against Parmeshwar, Ramnath, and Rajmun together, because there is very little difference in the evidence with regard to them. I do not think you ought to rely on the evidence of the butchers as to the presence of these three accused at the riot of the 6th September, as they have positively sworn here that they saw them at the riot before the committing officer, whilst as a matter of fact they never said anything of the kind, and one can hardly believe that Mr. Lang would have omitted this fact had it been really stated. All the police officers, including Birda Sing, swear to the presence of these three men. There was plenty of opportunity for them to identify the accused, as they were parleying with them for twenty minutes or more, and only at a distance of a few feet from them. There were two lanterns there at the time, one held by Ali Hossein, and the other by Peru, the cook of Akbar Ali. My friend will say a great deal about the lantern held by Peru, inasmuch as it was elicited in cross-examination that Peru was not examined until after Mr. Lang suggested that the man who held the second lantern was an important witness, and after Akbar Ali had stated in the Lower Court that he did not remember or notice who the person was who held the second lantern. Mr. Lang was not the officer trying the case, but only enquiring into it, and therefore his suggestion was a very right and proper one. Had the story of the second lantern been a pure concoction, Akbar Ali would have, at the commencement, stated who the man was, but his not remembering this fact, at the time he gave his deposition in the Lower Court, argues strongly against the suggestion of a concoction. Besides we have it as a fact, not now disputed, that these three accused persons were seen by the police officers previous to the riot at the thana at the time when bail was taken from them. Birda Sing in cross-examination admitted that he knew Parmeshwar Sing before, as he had given evidence in the case of Hira Ahir. It is also proved that Hazir Ali knew both Parmeshwar Sing and Rajmun before the 6th September. As I have already pointed out, these men had always shown a great interest in these cattle. Does this not strengthen the probability that they came with the mob to take the cattle away by force? My friend asked Gyatri in cross-examination whether *Telis* were in the habit of heading riotous mobs on horseback, to which Gyatri replied "it is not a common thing for *Telis* to do so." If you remember I said to you in my opening that the motives that actuated these three accused persons to commit the offences charged, were based on religious

feeling and sentiment, and I leave it for you to consider whether such motives would not actuate these accused on this occasion. It may be improbable that such men would head a riot under ordinary circumstances, when it may be said that they would order everything to be done whilst they would be sitting quietly in their homes, but when religious sentiment comes in, you can hardly tell to what lengths people will go.

Then we come to Mutki Rai. You have the evidence of all the police officers, including Birda Sing, who was the person whom all these witnesses say struck Birda Sing on the head with a *lathi*, and you have his own statement in which he admits that he was shot whilst standing in the large crowd which had collected near the thana. The Assistant Surgeon also proves that he had a gun-shot wound. Now I ask you why should all the police conspire to implicate Mutki Rai? You are prefectly entitled to consider any suggestion that my learned friend may make, that the police officers made a mistake in the identification of Mutki, but you would not be entitled to infer that the police officers have brought a false charge against this man unless very strong grounds were shown you.

With regard to Ajudhya Rai, the case for the prosecution is certainly a weak one, and I think he is entitled to the benefit of the doubt. Akbar Ali has stated in this Court that he saw him in the riot, but did not say so in the Lower Court. The only other evidence against him is that of Enayet hajam, who said that he took a shot out of his cheek. The Assistant Surgeon who examined him eleven or twelve days after the occurrence said that the ulcer on Ajudhya's cheek may have been caused by a gun-shot, but this is only an opinion. It is but fair to state that Akbar Ali admits that at the time he arrested the prisoner he asked him how he got that wound, and Ajudhya immediately said that it was caused by the *keyn* of a bamboo, a statement which he has all along adhered to.

Khedu Koeri is identified by Gyatri, Akbar Ali, Hazir Ali and Ali Hossein. He also admitted in his statement to the committing officer that he was shot near the thana where he stopped to see the large crowd that had gathered there, and who were shouting out "snatch the cattle." The Assistant Surgeon also proves that he had gun-shot wounds.

As to Jawahir Lall you have the evidence of Ramattar, Bindeshari Pershad, Khub Nárain, and Parmanund Saha, all of whom say that whilst they were sitting at Ramautar's lodging at about 7 P.M. that evening, they saw 70 or 80 people go by armed with *lathis* saying "What are you looking at?" "Snatch away the cattle," "Seize the cattle," and so on: that among these people they recognised Jawahir Lall, the patwari, among others whom they named and all of whom are residents of Basantpur. Ramattar's inability to identify Jawahir Lall from the dock, and his subsequently pointing out a wrong man when asked to go up to the dock, and then ultimately picking out Jawahir Lall, was explained by him. He stated that the man's appearance had considerably changed since he saw him on the night of the occurrence.

Mr. Garth admits that Ramattar knew Jawahir Lall, and the only point that he raises is that Ramattar being short sighted, it is highly improbable that he should have recognized Jawahir Lall out of a crowd under the circumstances. Of course this is a point which you must take into consideration. But with regard to the other witnesses there is no question of short-sightedness. It has, however, been suggested that these witnesses have falsely named this man, because Ramattar wanted to build on some land belonging to a zamindar whose patwari Jawahir was, and this accused did not allow him to do so. Beyond the suggestion of this enmity, there is no evidence to support it. Then there is the statement of the accused before the committing officer, in which he alleges that Ramattar and others were building a house (*makan*) and also a new hut, but there is no mention made of a latrine. (The statement was here read in the vernacular).

Mr. Garth.—I think the English version of this man's statement is taken down by the Magistrate who mentions "latrine."

Mr. Sutherland.—The Hindi version is the correct one and the only one admissible.

The Judge.—The English version is only a memorandum made by the Magistrate, but the Hindi is the correct version. But the Magistrate has "latrine" in his notes. I do not suppose that the Magistrate invented that.

Mr. Sutherland.—You may rest assured that if there is any doubt about the matter, I am not going to quibble, but leave it to the assessors to consider.

Mr. Garth.—The English notes differ also from the Hindi version on another point. The Magistrate's notes show that the place was one *kos* distant, which is not to be found in the vernacular. This shows the unreliability of these statements.

The Judge.—If the two versions differ you cannot press the matter.

Mr. Sutherland.—At all events I am entitled to say that the suggestion is not borne out by the cross-examination. As far as I remember the suggestion was that these men wanted to build a privy and that Jawahir would not give them permission to do so, whilst the accused's statement is that he actually stopped them when they were building. The accused has all along stated that there is this enmity, and you must attach some importance to it, as the law always intends that an accused person should give reasons when asked why the case has been brought against him. You will bear in mind that all the witnesses have denied that they had either ever built or wished to build a latrine, or that enmity existed. I have now summed up to you all the evidence implicating each of the accused. There are two small matters which I will here get rid of and which my friend will, no doubt, urge before you. The first is that inasmuch as some of the witnesses have sworn to the presence of Hurgobind Burhi and Kuldip Rai at the riot, the committing officer has discharged them whilst he has committed Mutki Rai and Khedu Koeri on the same evidence. My friend will argue from this that the Magistrate ought not to have believed the evidence of these witnesses as against Mutki Rai and Khedu. I submit that the reason why the Magistrate committed these men was that the evidence of the witnesses implicating them was corroborated by the fact of their being wounded by gunshot. This was the reason why he made this distinction, and this goes to show how fairly the committing officer enquired into this case.

The second minor matter is, that the witnesses have given their evidence here more in detail than they did in the Lower Court. The explanation in some instances was furnished by the witnesses themselves, who said that in the Lower Court they were not asked the questions which they were here asked. For instance, the witnesses here give in detail everything that transpired, and the words used at the time when the police were remonstrating with the three principal accused persons in front of the thana. You will find that the committing officer in dealing with this point of the evidence has only recorded a few of the details and generally described the remonstrances as parleying with the mob. Committing officers to spare themselves the trouble sometimes take down evidence in a very perfunctory manner.

Mr. Garth.—I do not think there is any evidence of this, and I submit that this suggestion ought not to be put. If he intended to rely on this he should have put Mr. Lang into the box, and I should have had an opportunity to cross-examine him. I do not think Mr. Sutherland is justified in saying that Mr. Lang did this or did that when the prosecution have not dared to put him in the box.

Mr. Sutherland.—This explanation which I offer is a reasonable one, and perhaps His Honour will be able to say whether his experience does not tally with mine.

Now, gentlemen, I wish to answer by way of anticipation some of the arguments which my learned friend will put before you, both with regard to the theory that he will advance as to what happened on the evening of the 6th, assuming that there was a large collection of men or a row of some kind, and the motives which he will allege as to why the police officers should falsely implicate these accused persons. My friend has so many irons in the fire that you will see for yourselves that when this case was committed to the Sessions those who are instructing my friend—I do not include Mr. Ghose, and the pleaders who are with him—saw for themselves that it was very difficult to get over the body of evidence on behalf of the prosecution, and put forward the suggestions which have been made in cross-examination of a conspiracy on the part of all the police to falsely implicate these three accused persons in addition to assigning special reasons in respect to each of the police officers which actuated him to bring a false charge against the accused persons. You will see for yourselves that the suggestions on the face of them are not only untrue, but you will see

that they bear the strong impress of an instructor who is behind the scenes and who, seeing the accused in a dilemma, has had put forward the suggestions I have referred to. You have heard that my friend in cross-examination has elicited that it was market day at Basantpur, that sometime during the 6th September these three accused persons at the thana informed Gyatri that a crowd was collecting, and that the cattle would attract the attention of the Hindus who felt strongly on the cow-killing question, and that as there was a likelihood of a row these three accused persons came and implored Gyatri to be allowed to remain at the thana that night, because if a row did take place they would be implicated in it. The theory here advanced is that these three accused persons had nothing whatever to do with any row if any did take place, but that it was brought about fortuitously or by chance by a mob who had collected there on a market day, and whose religious feelings and sentiment regarding kine were enraged on seeing these animals either being brought into the thana or when within the enclosure.

Now let us consider this theory. Unfortunately for my friend's ingenuity, you will find that these three accused persons, in their statements before the committing officer deny that they were at the thana at any time on the 6th September. And the suggestions made by my friend, it must be remembered, are not borne out by a single oath. If the suggestions now made were true, why did not the accused persons mention that they were at the thana, and why endeavour to conceal this fact? Their denial that they were at the thana on the 6th September tells very strongly against them. Which of these defences are you going to accept as the true one—what they now suggest or what they said before the committing officer? I ask you to disbelieve both and to accept the case for the prosecution as being true, unless you have strong reason to believe that the prosecution witnesses have deposed falsely.

Mr. Sutherland here read out the statements of the three accused in the vernacular. Whilst reading that of Ramnath Sahu, Mr. Garth said he had only the English version of these statements (to the putting in of which the defence had already objected on the ground that they were not properly recorded), and these were the only ones supplied to the defence.

The Judge.—The English one is never admissible. This statement is put in all right, for it bears his signature by his own pen. No objection was taken on that ground. The objection was that it was not recorded in the form of question and answer. The record is the vernacular one and you are bound by that; at the same time you are quite at liberty to draw attention to any discrepancy between the Hindi and the English.

Mr. Sutherland continuing said.—These three men in their statements account for the whole of their actions from the 30th August to 9th September, and there is not a single word mentioned of their ever having come to Basantpur on the 6th September. Forsooth, you are now asked to believe that these *Telis* came to the police as loyal and good citizens out of pure and disinterested motives, to warn the police of a likelihood of a row, and forsooth as harbingers of peace. I ask you to hold that there is not an atom of truth in this theory. Had there been a shadow of truth in it, what would have been their natural conduct? Would they not have acted very differently throughout? Would they not, after the police refused to allow them remain at the thana, have gone out to the crowd and told them: "There is no good kicking up a row, we are so-and-so and influential men; we have done our best to get the cattle from the police, but they have no power to give us the cattle, and they say the District Superintendent and the Magistrate will be here to-morrow. The cattle cannot be taken away at night. Why do you clamour for their release immediately? We will exercise our influence with the authorities when they arrive to-morrow, when the butchers will be paid the price and the cattle will be released?" Would not that be the natural conduct of these men if they came, as my friend suggests, as harbingers of peace. You are also told that these men sought protection from the police, as they would be falsely implicated in the event of a row; but who would implicate them? Surely not the mob, and is it likely that they would throw themselves on the protection of the police, who, according to their own suggestions, are their bitterest enemies? This I submit is the last thing they would do. There is nothing suggested as to what happened to these men when they left the thana after the police

would not allow them to remain there, where they went to and when they first came to know that they had been falsely implicated in this case.

This theory is negatived by ample evidence and by all the probabilities of the case. My friend will ask you to hold that if any row did take place, it was fortuitous, on the ground of its being market day, but may it not be that the people who got up this riot, purposely fixed upon the market day in order to account hereafter for a number of men assembling with *lathis* in their hands?

I now come to deal with the motives that will be urged as to why the police have "falsely implicated" these men. The first is that these police officers all conspired together, as they had on a former occasion failed to get a conviction against Parmeshwar Sing with reference to the case brought against him by Hira Ahir on a complaint of rioting which was said to have been found false. Beyond the suggestion there is no evidence on the point that the case was a false one. Let me assume for the sake of argument that the case was a false one. What connection had the officers of the police in this case with Hira's case? Birda Sing was a witness against Permeshwar, and said that Permeshwar on horseback had headed a riot of 500 men. If Birda Sing deposed falsely, then you have now only to be very careful in dealing with his evidence when he comes to implicate Permeshwar only. But you have other police officers who had no connection with Hira's case to induce them to falsely swear in this case. Beyond Hazir Ali having recorded in the diary the first informaton of Hira and of his having deputed a constable, he had no other concern with Hira's case.

I now come to the suggestion in the cross-examination of Akbar Ali, as to whether he did not, after the occurrence, send word to these three accused persons that if they paid Rs. 400 each their names would not appear in this case.

Is it likely that a head constable, who recorded Gyatri the police inspector's first information after the occurrence, would of his own accord be so daring as to send a man to these persons asking for a bribe? I could understand that suggestion if all the police at the thana had combined together to make this demand, but that has not been suggested in cross-examination. It is impossible to suppose that, if there is any truth in this suggestion, the whole of the police in the thana would not only have known of it, but would want a share of the money. You have eight armed constables of the guard, a head-constable of the guard, Akbar Ali, the head-constable, two munsarims, the inspector, and Khyrat Ali, the sub-Inspector. Divide the Rs. 1,200 amongst these men and ask yourselves whether it was worth the while of Gyatri to enter into this conspiracy for his share of the spoil, which would only be a very small amount. Of these police officer Akbar Ali has been 23 years in the service, and nothing has been suggested against him, nor in fact against any of the other police officers except Gyatri, who has been 13 years an inspector of police. The only matter suggested against Gyatri is that his conduct was characterised as dishonest in a report of the Inspector-General of Police with reference to a charge of assault against some unknown persons, in which he was the complainant. Beyond the suggestion there is no evidence of this. There is not a single fact brought out to show that, in the career of all these policemen, they have done anything which would incline you to put any degree of reliance on the insinuations made by the defence. As to Gyatri, regarding his assault case, I must remind you that he was neither degraded, suspended or punished in any way, and as among the papers produced at the instance of the defence, there was no such report as was alleged, nor anything to show that such a document ever existed, all these insinuations turn out to be a myth.

With regard to Hazir Ali, it was suggested in cross-examination that the reason why he has falsely named Rajmun and Ramnath is, that he asked Rajmun for cloth for his nephew's wedding, and he asked Ramnath for a shamiana and some silver ornaments for the same wedding. Now, gentlemen, just consider the absurdity of this suggestion, also supported by no evidence. The nephew's wedding took place at Arrah, which is 30 odd miles away from the villages of these two accused persons, in May last. If he wanted these things, why should he go to these men instead of applying to friends at the place where the wedding took place, and thus save himself the trouble of taking these things so long a distance? There is another reason which negatives this sugges-

tion, and it is this: if Hazir Ali had really asked for these things and the accused refused them, and if on account of the refusal he has borne them any ill-feeling, why did not he, when he recorded the first information of Nathuni on the 31st August regarding the Bala occurrence, record it in such a way as to make it appear that these two accused persons were actually present themselves at that riot? According to the defence view of the character of Nathuni, Hazir Ali would have had no difficulty in inducing Nathuni to mention them as actually having been present at the riot. Besides this, Hazir Ali is a Muhammadan; why should he, if he was in want of these things for that wedding, go to Hindus for them, in preference to persons of his own creed?

I have so far endeavoured to answer by way of anticipation the principal arguments my friend will urge on you. I will now deal with a matter which I ought to have taken up at the commencement, but purposely have deferred till now, and that is the evidence of the two chaukidars regarding the Gaurakshani Sabha held at Basantpur on the 26th of August. The evidence of these two men shows that these three accused persons and Mutki Rai were present at that meeting, at which, amongst other things preached by the pundit, was the dangerous doctrine of rescuing cattle intended for slaughter. Besides these accused persons others were named as having been present, who are not accused persons, and I ask you on what ground can you disbelieve these two chaukidars when there is nothing to rebut their story? The defence themselves have suggested that at the Bala occurrence the mob said that if the cattle were sold by the butchers that Parmeswar and Ramnath would pay the price for them, and the defence also suggests that on the 6th of September at the thana these two accused and Rajmun Sahai asked the Inspector to release the cattle on their paying the price. Since we see these three accused persons have all along taken great interest in this cattle, does not this go very strongly to corroborate the truth of the chaukidars' story regarding the presence of these accused persons at the Gaurakshini Sabha of the 26th August? I lay great stress on this matter, as it strongly corroborates, what I said to you in my opening, that these accused persons, in committing the offences with which they are charged, were actuated by motives of religious feeling and sentiment. The cross-examination nowhere suggests that the interest these accused persons took in these cattle was of a sudden character, but everything in the case indicates that this interest was inspired by religious sentiment, which the prosecution trace to the teachings and preachings of the Gaurakshini Sabha at Basantpur. I ask you how can you account for the admitted interest these three persons have taken in this cattle except upon the hypothesis suggested by the prosecution, and in support of which evidence has been given, namely, that the occurrences of the 31st August and 6th September were the direct outcome of the Gaurakshini Sabha held at Basantpur. If you believe the evidence as to the fact of an occurrence taking place at the thana on the evening of the 6th September, and of the nature deposed to by witnesses, you have no hypothesis suggested to you as to why that occurrence took place, except the one put forward by the prosecution.

I think I have now called your attention to all the principal points in the case, and I have no desire to take up your time any further by any minor points. I trust I have omitted nothing of importance on which you will have to give an opinion, and that I have clearly made myself understood to you on all matters on which I have summed up to you.

One of the assessors asked Mr. Sutherland to explain the difference between the expressions "*Mowahinsi ne jana pahin*" and "*Mowahinsi ne jana pawega*" as affecting the intention of the accused when they asked for the release of the cattle, and when the above reply was given to the Inspector in one of those two forms, the assessor pointing out at the time that there was a difference in the meaning of those two expressions.

Mr. Sutherland, in reply, stated that if they believed that these three accused persons were the ringleaders at the riot, there could be no matter of doubt as to what they meant if either expression were used.

The Judge (addressing the assessor).—Where does the expression "*nahin páwe*" appear?

The assessor informed the Court in part of the depositions these words appeared, upon which the Judge after referring to his notes said: The words I have got are "the cattle will not be allowed to go."

Mr. Sutherland.—Before I conclude I will have to draw your attention to two matters which Mr. Garth will urge before you. The first is the suggestion made in the cross-examination of Gyatri, that he ordered the mob to be fired on not because he was in fear of his life and the lives of the police officers and the looting of the thana, but with the view of making it appear that he had averted a serious occurrence taking place by this means in the hope of getting promotion in the same way as one Zinath Hossein, an inspector, who was made an Assistant Superintendent of Police for having quelled a riot under similar circumstances and by similar means. We have nothing before us with regard to Zinath Hossein and the suggestion made. I ask you to consider the suggestion on its merits. Don't you think it dangerous to believe that a police inspector would take upon himself the responsibility of firing on a mob, knowing that loss of life may occur or persons be wounded, when there was no necessity for his doing so, on the chance that his conduct might be approved of by the higher authorities, when on enquiry it would be found that his conduct was utterly unjustifiable, in which case instead of getting promotion Mr. Gyatri would find himself in a very different position?

Another point my friend will urge is that if the occurrence was of the nature described, the wounds on those said to have been shot would not have been trifling, and that more persons would have been seriously injured. My explanation is that when Gyatri ordered them to "golee maro" he did so in a loud voice for the mob to hear, and naturally all those rioters who were in front of the police backed away to both sides, leaving a clear avenue, so that the shot only reached those who were at the end of the avenue.

This brought Mr. Sutherland's address to a close.

Mr. Garth's address.

Mr. Garth then addressed the Court and assessors as follows:—I can assure you that it is with a very deep sense of the responsibility cast upon me that I rise to address you in this case. It is in every way a very great responsibility. It is always a responsible thing to defend men with regard to whom it is stated in the opening that they are not men likely to commit crimes, but men who have up to the present time been of the highest respectability, and who are called upon suddenly to answer charges the result of which may be that they may be sentenced to very long terms of imprisonment. But there is in this case something which presses upon me even more than that, if it be possible, and which gives me even more anxiety. You were told by Mr. Sutherland in his opening that you were to eliminate from your minds anything about this case that you may have heard outside. No one can be otherwise than aware that it is an exceedingly hard thing to put away impressions once formed, and the unfortunate part of this case for the accused is that this trial has been treated as a political matter. Long before this case came into Court, there were articles published in the Government organs—the *Englishman* and the *Pioneer*—describing this affair as a loot by Hindus of Government cattle, and calling upon the authorities at once to take steps to see that the offenders were promptly brought to justice, assuming—as these papers invariably assume—that this crime had been committed, and pointing out that it was an extremely important thing for this country that things of this kind should not be allowed to go on, and Mr. Sutherland also in his opening makes it clear that it is a political matter. He has described the offence as "waging civil war," and he laughs at me for calling the utterances of the Gaurakshini Sabhas "treason." Your minds, as well as the mind of His Honour—I speak with the utmost respect when I say so—have been poisoned, or an endeavour has been made on the part of the Government to poison them, through the medium of their organs, with their leprous distilments assuming that there has been a loot of Government cattle, and that there has been a civil war. It is an attempt to make the case one of political importance, and to affect the minds of judicial tribunals with the political view of the case, that in all countries and in all ages, wherever it has succeeded, has had the effect of poisoning the very founts of justice. You cannot but remember the celebrated libel trials before Lord Mansfield, to which so much political importance was attached, and in which time after time Mr. Erskine, the

advocate on behalf of the accused, had to call attention to the fact that Lord Mansfield was biassed on behalf of the Government. The name of that otherwise great Judge will always be stained by his conduct in those cases. With that example before us, it is impossible for any man to approach this case as an advocate on behalf of the defence without feeling that he has this against him, and it is a most important thing. It is assumed, as a fact, that there is a great outcry, and that the Hindus have done this, and you are now sitting here to try this case. It is almost farcical. My friend does not appear for the police, but for the Government who have disseminated throughout this country, and even through the *Times* in England, that there have been riots here, and that there has been an attempt to loot Government cattle. I shall show you from the evidence in the case that the statement that these cattle were Government cattle is nothing else but a lie—it is an absolute misrepresentation. The cattle were not Government cattle: the Government had nothing to do with them; and this has been proved by the mouth of their own witnesses, with whom I will deal later on. You are first told that it was a loot of Government cattle, and it afterwards turns out that they were not Government cattle, and as for loot—why not one head of cattle has been looted by a single soul. What then becomes of this great outcry "loot of Government cattle," "civil war," "the Hindus are becoming very daring and must be stopped?" All this has been done by the Government through their organs, and now at last we have seen the witnesses by whom they have tried to prove it. The worst of it is that although it might be a very easy task to show you that the evidence given in this case is not the sort of evidence upon which you ought to convict, I know so well that there is a strong feeling upon this matter, and that there is an immense political importance attached to this trial, and it will be said that if the tribunals of the country are not going to convict, we shall be landed in civil war. Now I do pray and beseech you to put out of your minds anything of this sort that you have heard on the part of Government, because the fact that the Government have grossly misrepresented the state of facts here is now abundantly clear, and none of these considerations should have any weight on your minds. I am perfectly sure that I am addressing gentlemen, who will do their utmost to remove from their minds any impression of this kind which may have been created. But it has been said by a very eminent Judge, that it is absolutely impossible even for a Judge upon the Bench to be sure that he has removed from his mind an impression which he ought not to have taken into consideration, and I know therefore that, with the best intentions in the world, these impressions once formed cannot be easily eliminated. No one can say how deeply implanted in his mind an impression may be. I do ask you, therefore, to do your utmost to remove all impressions from your minds, and I earnestly implore you to give the prisoners who stand before you a fair trial. For God's sake let us have a fair trial, and do not be prejudiced by anything that the Government may have said about "civil war" and "loot of Government cattle," and what the Hindus have done, and this, that and the other. If you are in the slightest degree influenced by any such consideration, this will not be a fair trial, but a mockery of a trial, because you will be first assuming that those men are guilty, and then sitting to try them. I beg and beseech you to follow the evidence and nothing else—decide upon the evidence and nothing else. You are not to allow your minds to be swayed in the least degree by anything you may have heard prejudicial to Hindus or by political considerations With whether this is or is not an important case politically you have nothing on earth to do, nor have I. We have nothing to do with Hindus, or Muhammadans, or Englishmen, or the Government in this case, which must be simply regarded as any other ordinary case of the same sort. We are now in an arena where we have nothing to do with any consideration of what is the best for the country politically. We must confine ourselves merely to the consideration of the one single question. Did the persons before you commit the offences which the Government have charged them with? If you find after considering only the evidence in this case that they have, it will be your duty to convict, and if they are convicted, it will then be the duty of the Government to consider if this is a political matter, and what degree of political importance there is in it.

For me or you or his Honour there is absolutely no importance in this trial, save in the question whether or no, upon the evidence, these men are guilty. If you allow any other matters outside this question to influence your minds, then this trial is a mockery, and I might as well not address you at all on behalf of the defence.

You have heard my learned friend's opening, in which there is a great deal that is worthy of your attention, but there is one sentence in that opening to which I must object most strongly. He stated that a great majority of the Hindus were in favour of the taking away by force, if necessary, of cattle which were being taken to slaughter, but on that point there has not been one title of evidence produced. This is a Government statement.

Mr. Sutherland.—I do not think I said that, I said a large portion.

Mr. Garth—If you say of a certain people that a large portion are in favour of anything, I should take that to mean a large majority. I see no distinction in it. But I will show you how ingeniously all this is put forward without any evidence whatever to support it. Not only is there no evidence of it, but so far as I know of Hindu gentlemen, and I have very many friends amongst them, I believe this statement to be a gross libel. But the point here is, where is the evidence in support of this statement? If there is any evidence forthcoming, why was it not put before you? Why, if they wish this trial to be free from political bias, do they begin by asserting that which they not only do not, but cannot prove?—because the transition is so easy. They begin by asserting that most Hindus are in favour of dacoity for the purpose of rescuing cattle meant for slaughter. Then they say that these people in the dock are Hindus, therefore, they are to be considered as being in favour of dacoity to rescue cattle. They probably belong to the majority, and the majority are in favour of dacoity, and dacoity is charged: therefore they are guilty. There is not only no proof of this—no evidence—but it is so absolutely false a statement that it recoils upon the Government. It leads to the inference that their case is so weak that it needs bolstering up, and they feel that everything must be put in, fair or unfair, and every means used to poison the minds of the assessors. The suggestion to a Muhammadan gentleman like yourself (addressing the Muhammadan assessor) that most of the Hindus are in favour of committing dacoity, is naturally one which must have its effect upon your mind. What is done with one man's property in this case to-day may be done with yours to-morrow. This statement you will find is untrue—it is a lie. What do you think of such a prosecution? This is what weighs me down in this case. There are no witnesses called who can be cross-examined about it, no evidence put forward which can be sifted. My learned friend is being instructed by somebody, and though I tried to get out of him who was instructing him, I could get nothing from him but that it was the Government—that vague thing the Government—and so there is nobody who can be made liable or dragged into the light of day for putting this forward. It is an aspersion upon the Hindu community. If any tangible, responsible person said so, there would be a remedy; but the prosecution do not dare to do that—they suggest to you that these people in Basantpur were capable of committing dacoity. I say that this suggestion recoils upon the Government. I will show that the case breaks down from the very first, if they are obliged to come into Court with statements of that kind, which we say are untrue, and which they cannot and do not prove by evidence. This is at any rate one thing which has been put forward to poison the minds of the assessors. Take the next point. It has been suggested throughout this case that these cattle were Government cattle. But they were not Government cattle. I will deal more fully with this point to-morrow. At present I do not propose to deal with the evidence in detail, but am going through the principal heads of it. The evidence put in by the prosecution to prove that they were Government cattle has broken down completely. They try to invest the case with political importance by saying that if these people are prepared to commit dacoity not only upon private property, but upon Government cattle, the matter becomes very serious, and you must take care that you convict. The answer is that it is not true, and that these were not Government cattle, and not only is it not true, but the least careful enquiry would have shown the Government its untruth at once. Then, again, they also urge before you that these three

principal accused were guilty of rioting on the 31st, but they do not want you to enquire carefully into that case. They tell you that this is merely incidental. I never heard of the suggestion "we are not going into that case except incidentally." They say that "these men came on horseback on the 31st, and were encouraging a mob to snatch away cattle; don't you think it likely that they did the same thing on the 6th?" They assume the guilt of these people on the 31st incidentally, and say: We do not want you to consider that occurrence, because we have not got much evidence as to that, but just be kind enough to assume that, and then you will have less difficulty in believing our evidence as to the occurrence of the 6th, which is the only matter we wish you to enquire into here.

Mr. Sutherland had nothing to offer you but a series of apologies when he was dealing with the evidence as to this part of the case; but he says, in that airy way of his, never mind going into this very fully, it is only incidental. What this really means is that the Government witnesses are hopelessly discrepant and unreliable on this point, and the case as to it won't bear investigation, but don't investigate, treat it as incidental, and assume it to be true, the fact being that if this part of the case is shown, as I will show it, to be false, it not only ought to, but I feel certain will have a great effect upon your minds as to the other parts of this case.

Then we have a long dissertation with regard to the identification of these people. I shall show you that the importance of that is not as to whether the actual identification spoken of took place, but whether these men did identify at all. This story is put forward to try and get over the hopeless weakness of the case, as to this so-called Bala riot. Nathu did not say anything in his first information with regard to the Bala occurrence about the three principal accused being present, and now the identification story is got up to show that notwithstanding these three accused must have been there, or the butcher could not have identified them. Supposing you come to the conclusion, as I trust you will, that the identification story has broken down, you must see what a bearing this has upon the rest of the story of the prosecution. If the case has broken down on three points out of four, you cannot place much reliance upon the fourth point. A house built upon four foundations is not likely to be very secure if you take away three of them. I submit you must take a story as a whole. You cannot say, as Mr. Sutherland would have you say, well that part does not seem very nice; I do not think I can find against the accused upon that; I am going to try that part of the case incidentally. I will get rid of all that from my mind, and see what happened on the night of the 6th, and if there is evidence on this point, there must be a conviction.

Now, gentlemen, I ask you to take this case and consider it as a whole, and I pray you to remember that there are serious things stated in this case, which have broken down completely, and I have alluded to some of them. This case is divided up into parts, and if you find that three out of four, or four out of five of them are false, and have broken down, those shattered parts must react upon the last one. It is impossible to ignore these hopeless portions of the case and accept the remaining part, with regard to which Mr. Sutherland says this is all right. Here the police are by themselves; they have concocted this part of the case with more than ordinary care. They won't break down, therefore you must convict upon that.

My case is that these men were wrongfully accused of the Bala row, that they came in on the 6th in answer to the summons which was in itself a deception, as it called upon them to present themselves as witnesses, and when they came they were made the accused persons. This is a little plan which I dare say you have heard of before. You are summoned to appear as a witness in the case of so and so against persons unknown, and when you arrive, you are told that you are the "persons unknown," and then you are bailed out. They were charged falsely, they knew the charge was a sufficiently serious one, and that if they were convicted, they would get a term of imprisonment to be measured by years, and accordingly they come back to the thana, and nothing would be more probable, say the prosecution, than for persons in this position, charged for the first time with an offence of this kind, to at once say, in for a penny in for a pound, let us have a good row to night. The prosecution seriously mean you to believe that the first thing they do after that, is to say we have had no fun

for this charge, which is perfectly false, we will show them that we can do something, and they immediately lead up a mob of 4,000 persons. The story is so improbable that it is impossible. The argument of my friend is, what is there so astonishing in men saying, well, if you have found me out I will lead a grand mob. Of course, when it is taken for granted that they are the men who came on horseback in the Bala affair, what can be more likely than that they said, we will lead a better mob still against the thana.

Take this from the other point of view. These three principal accused are respectable zamindars, men who have never had anything against them, as respectable law-abiding citizens as you and I. The bringing of this charge against them must have struck terror into them, and this I submit is the ordinary effect of a serious charge being brought against any one. I do not know a single case in which it would not have that effect, particularly having regard to the fact, of which you are well aware, that the police in this country are very powerful. Very many false charges are brought against men in this country as you know, and how very few of them are found out as compared with the number that succeed. Persons have been committed over and over again on false charges, as all of us know, and how few who are falsely charged in this way can say with confidence "I shall be let off." The experience of any man who has lived in this country will be "I have known many and many of these charges succeed." Under these circumstances, would it be anything but natural to suppose that there would be nothing but terror in their minds, and would it not be impossible to imagine, unless a man were a determined ruffian, that he would immediately, after having been falsely charged with this serious political offence, go again and place himself at the head of another and larger mob? I say that such men as the three accused would be struck dumb with terror, and that they would be the last persons in the world to go at once and commit a crime of violence. I submit that this is human nature, and that what Mr. Sutherland has been describing to you is not. It is not human nature to suppose that men like them would not be paralysed with fear, and would not be wondering how on earth they were going to get off if the police could trace that they had any hand in another occurrence happening shortly after the one in respect of which they were already falsely charged, and which was similar to and yet more serious than the other.

I earnestly submit that it would not be the natural feelings of these men at all, and that for them to go and commit another crime at once is in the highest degree improbable. I shall put it to you that the story told by the prosecution is in the highest degree improbable, while our story on the other hand is extremely probable. You are not at liberty to disregard the probabilities of the case, because a few men have sworn to a thing. You must remember that in a case where the story told is an improbable one, and especially one so utterly improbable as this, you are bound to see that the evidence you are acting upon is evidence of such a character as must satisfy you beyond all reasonable doubt that the men did what they are said to have done. You must not believe a thing simply because a witness swears to it, and you ought to regard the case as if a child or brother or friend of yours was accused by some other person of having committed an offence which he is very unlikely to commit, the accused having borne to your knowledge a perfectly irreproachable character. You will say in such a case, I cannot help it that so and so swears to this or that, but it is extremely improbable that a man who has been leading a perfectly respectable and peaceable life, should have suddenly diverged into the paths of crime in the way described. In that case you have got to consider among other things, what position the witness occupies, might he not have been mistaken, might it not be that the witness himself has diverged into the paths of crime and told a deliberate lie? The way in which you would deal with regard to the hyphothetical case I have put to you is precisely the way in which you should look at the case of the accused before you. These men would not, even according to the story of the prosecution, commit dacoity ordinarily, and you are bound to assume that they are perfectly respectable men, and not at all likely to commit such an offence, and you cannot say that they have diverged into the paths of crime, unless upon evidence of the purest and weightiest kind. I pray you to consider the evidence upon these lines, and see whether the story is probable, whether the witnesses are thoroughly trustworthy and above suspicion of every kind; that they are

not actuated by any motive of any kind, and that they were not mistaken. You must sift not only the evidence upon the occurrence in question, but you must carefully sift everything the witness has said from his whole story; see if yon can predicate that he has fairly and honestly told us the whole truth, and if you come to the conclusion that what is so improbable did in this case happen, you are not to come to that conclusion lightly, and you are not to say that I believe it because A, B, and C have sworn to it. I tell you that upon police evidence in this country, and upon police evidence alone, it is exceedingly unsafe to convict, and I say this knowing something of the subject. In this case you will find that there is not one single respectable witness called to speak to the occurrence in front of the thana, the only evidence on this being the four or five police witnesses, while two very important witnesses have been suppressed by Government. I submit that these facts alone are sufficient to justify you in saying "this is not a case in which we would convict, the evidence is not trustworthy and above suspicion, and the police are all ranged together." In this case you are bound to sift the evidence very closely; if you find that the evidence of the police is not satisfactory on this point or on that point, you cannot go away and say I am so satisfied these men are all telling the truth—although they belong to the police they are the archangels of the police,—that I will believe their highly improbable story in spite of their being the only witnesses of the occurrence, and convict the accused on their statement alone.

I beseech you to keep your mind open and do not be influenced by some of the statements extracted from the prisoners in the lower Court, and I ask you to say that upon the whole of the evidence in this case it will be extremely unsafe to convict. I do not propose to go into any other points this evening.

The Court here rose for the day.

The 12th and 13th December 1893.

Mr. Garth continued his address to the assessors during the whole of Tuesday, and up to 1-30 P.M. on Wednesday, commenting at great length on the evidence in the case, which he submitted was utterly unreliable in regard to the occurrence of the 6th September, and hopelessly shattered in regard to the other parts of the case.

The assessors retired for over two hours, and unanimously returned the following verdict, which was delivered by the Muhammadan assessor:—

We are both agreed in our opinion. We find Mutki Rai and Khedu Koeri guilty under sections 147, 395 and 402, I.P.C.

We do not find Jawahir Lall guilty.

We do not find Ajudhya Rai guilty.

We do not find Parmeswar Sing, Ramnath Sahu, and Rajmun Sahu guilty.

The Judge.—You acquit on all the charges Maulvi Mohamed Aslam?—Yes, we acquit them on all the charges.

The Judge.—Can you give reasons?—The assessor. Yes.

The Judge.—As regards these men Mutki and Khedu Koeri, you acquit them under the other two charges?

The assessors.—We acquit them under the other two charges.

We give the following reasons for our verdict:—Mutki Rai and Khedu Koeri have stated before the committing officer that they were about the gate of the thana at the time of occurrence, and that they received shots there.

As to Jawahir Lall, his name is not mentioned as being in the riot. We do not believe the registry servants, the four witnesses. Besides, he was not identified in the Court to our satisfaction.

As regards Ajudhya Sing, there is only one witness who has said that he extracted a shot from his body. This man (witness) comes out of a class utterly untrustworthy. With regard to Parmeswar Sing, Ramnath Sahu, and Rajmun Sahu, the evidence produced on behalf of the Crown is not so satisfactory as to justify us to find them guilty.

His Honour reserved judgment.

JUDGMENT OF THE SESSIONS JUDGE OF SARAN IN THE BASANTPUR RIOT CASE.

COURT OF SESSION, APPELLATE JURISDICTION.

EMPRESS

versus

(1) Ramnath Sahu, (2) Parmeswar Singh, (3) Rajman Sahu, (4) Khedu Koiri, (5) Matuki Rai, (6) Jawahir Lal, (7) Ajodhya Rai.

Sections 395, 402, 147, $\frac{152}{149}$ *and* 151, *Indian Penal Code.*

OPINIONS OF ASSESSORS.

Both the assessors are agreed. They find Matuki Rai and Khedu Koiri guilty under sections 147 and 395 and 402, Penal Code. They would acquit Jawahir Lal on all the charges. They would acquit Ajodhya Rai also on all the charges. They would acquit all three accused—Parmeswar Singh, Ramnath Sahu and Rajman Sahu—on all the charges. They would acquit Matuki Rai and Khedu Koiri on the charges under sections $\frac{149}{152}$ and 151, Penal Code.

"We give the following reasons for our verdict. As regards Matuki Rai and Khedu Koiri, they have stated before the committing officer that they were about the gate of the thana at the time of occurrence, and that a few shots hit them. As regards Jawahir Lal, his name is not mentioned that he was in the riot, and we do not believe the story told by the four witnesses against him. Besides, he was not identified in the Court to our satisfaction. As regards Ajodhya Singh there is only one witness who has said that he extracted shot from his body, and this man (witness) comes out of a class utterly untrustworthy. As regards Parmeswar Singh, Ramnath Sahu, and Rajman Sahu, we think the evidence produced on behalf of the Crown is not so satisfactory as to justify us in finding them guilty."

H. W. GORDON,

Sessions Judge.

The 13*th December* 1893.

THE EMPRESS

versus

(1) Ram Nath Sahu, (2) Parmeswar Singh, (3) Rajman Sahu, (4) Khedu Koiri, (5) Matuki Rai, (6) Jawahir Lal, (7) Ajodhya Rai.

Sections 395, 402, 147, $\frac{152}{149}$ *and* 151, *Indian Penal Code.*

Judgment.

THESE seven men have been committed for trial by the Joint-Magistrate of Siwan. They are charged with having committed various offences on the 6th September last at Basantpur police-station in this district.

The first charge is that they committed dacoity; the second, that they assembled for the purpose of committing dacoity; and the third, that they committed rioting. The fourth and fifth charges under sections $\frac{152}{149}$, Penal Code, and 151, Penal Code, have been practically withdrawn by the counsel for the Crown, and therefore in respect of these two charges all the accused men will be acquitted.

The words "committed dacoity" in the first charge mean that the accused conjointly attempted to commit robbery (see the definition of dacoity in section 391, Penal Code), that is to say, they conjointly attempted, on the 6th September last, to commit theft of about 129 head of cattle, which were at that time in the custody of the Police at Basantpur thana, under such circumstances that, if the theft had been completed, the offence would have amounted to robbery; the words "assembled for the purpose of committing dacoity" mean that the accused assembled for the purpose of committing robbery in respect of the cattle above referred to. In the third charge of rioting, which I have amended at the request of the counsel for the Crown without objection by the counsel

for the accused, the object of the unlawful assembly is set out as being "to forcibly take possession of and forcibly carry away about 129 head of cattle which were then in the custody of the Police at thana Basantpur;" and it is further stated therein that force was used in prosecution of the common object. With these remarks explanatory of the character of the charges, I will now state what is the case for the Crown.

On the 26th August last, a Gourakshini Sabha or meeting was held at Basantpur. A large number of Hindus belonging to Basantpur and neighbouring villages attended this meeting, and among them were the three accused men—Parmeswar Singh, Ramnath Sahu, and Rajman Sahu. A pandit addressed the meeting. He preached certain doctrines in regard to the protection and support of cows, and told the people assembled that they were to employ force in order to prevent cows from being used for the purpose of slaughter. On the 31st of August, as an outcome of this meeting, there was a riot on the high road, near Bala Indigo Factory, in which a large number of Hindus, headed by the accused Parmeswar Singh, Ramnath Sahu on horseback, and Rajman Sahu on foot, attacked some butchers, and attempted to drive off 131 head of cattle which they were escorting from Champaran to Dinapur. Nathuni, one of the butchers, had received in the previous May an advance of Rs. 900 from a meat contractor at Dinapur to purchase cattle for the Commissariat Department at that station, and he and several other butchers accordingly went to Champaran and purchased cattle there, and he was returning with them to Dinapur when he was attacked by a large mob of Hindus, who dispersed on the approach of Mr. Bean, the Manager of Bala Factory. Before Mr. Bean reached the spot, Nathuni, with two other butchers, Jhanjhu and Hussain Bux, hurried off to Basantpur thana, where they arrived at 10 o'clock the same night. Nathuni's information was then recorded in the police-station diary by Hazir Ali, writer-constable, who, in the absence of Sub-Inspector and head-constable, was in charge of the thana. Hazir Ali at once sent a letter containing particulars of Nathuni's information to the Sub-Inspector Khairat Ali, and with Nathuni hastened to the spot. There he learnt that the cattle had been driven off by the other butchers to the neighbouring village of Khawaspur, where he found them on the morning of 1st September. The Sub-Inspector of Basantpur, Khairat Ali, arrived at Khawaspur on the afternoon of 1st September, and then recorded Nathuni's statement in the first information form. The cattle remained at Khawaspur all day Friday the 1st of September, and next day they were driven by the butchers to Basantpur, and were kept under their charge in a grove some 300 yards distant from the thana building. On the 4th of September information of the Bala riot reached the District Superintendent's office, and an armed guard consisting of one head-constable and ten constables was at once despatched to Basantpur to protect the cattle, and on their arrival there they were placed on guard (with the butchers) over the cattle in the grove near the thana. The District Superintendent of Police and the Inspector of Chapra, Gayatri Prasanno Ghosal, arrived at Basantpur at 11 A.M. on 5th September, and both these officers held an inquiry into the Bala case on the following day, the 6th September. On the 5th September the three accused men were summoned to attend the thana as witnesses in the Bala case, and they attended at 3 P.M. on the 6th, were identified by three butchers as having taken part in the riot, and were then released on bail at 5 P.M. At 5-30 P.M. they returned to the thana with their three sureties, and told the Inspector that the cattle would not be allowed to go, that the Sadhus have not eaten food for three days, and that it would be better to induce the butchers to sell the cows for a price and release them. The Inspector told them that he had no authority to do this, and that they had better wait till next morning, when the District Superintendent and the Joint-Magistrate of Siwan were expected, and they might arrange matters with the butchers. The three accused then left the thana dissatisfied, and using the word "accha ham jate hain." The Inspector anticipating trouble, then ordered the armed guard to bring the cattle from the grove into the thana enclosure, and this was accordingly done at 6-30 P.M. At about 7 P.M. a great uproar arose in the direction of the road to the south of the thana, and Inspector Gayatri from the upper story of the thana saw a large crowd approaching. He accordingly ordered the police to put on their uniform, and the armed guard to get ready, and then with them and the thana police officers proceeded to the

gateway of the thana, where he drew up the armed guard in line so as to bar the entrance. By this time an armed mob of 3,000 or 4,000 men had arrived in front of the gateway which is on the north side of the thana. They were headed by the three accused men, Parmeswar Singh, Ramnath Sahu and Rajman Sahu, and kept leaping about, brandishing their *lathies*, calling upon the police to give up the cattle, and shouting out "Pawari Baba ki jai," "Mahabir ki jai," and "Kali ki jai." The Inspector with his officers went in front of the armed guard and remonstrated with the mob. He particularly addressed himself to the three ringleaders—Parmeswar, Ramnath and Rajman; he expostulated with them and asked them to disperse. They in reply called upon him to release the cows, and he then told them to wait until the Magistrate and the District Superintendent of Police arrived, when some arrangement might be made. His remonstrances were unavailing. The mob pressed on up to the gateway shouting out *mar, mar, lut*, threatening to kill the police and plunder the thana, and one of them, the accused Matuki Rai, came out of the mob and struck Birdha Singh, constable of the guard, on the forehead with a *lathi*, and then mingled again with the mob. The police then retreated a little, and the armed guard fired two rounds of blank cartridges over the heads of the mob, but without effect. The mob still pressed on assuming a more threatening attitude, and using more threatening language, and then the Inspector, in defence of life and property, ordered his men to fire ball (*goli-maro*). The armed guard then fired buck-shot at the mob, and Inspector and Head Constable Ali Akbar discharged their revolvers at the mob at the same time. Directly the police fired the uproar ceased, and the mob scattered and dispersed. The police pursued them for a short distance, and then returned to guard the thana. Information of the riot was promptly despatched to the Joint-Magistrate of Siwan and the District Superintendent, who arrived at the thana early next morning with some members of the Bihar Light Horse.

The above is substantially the case for the Crown, and to prove it twenty-three witnesses have been examined, and one witness, Sub-Inspector Khairat Ali, has been tendered for cross-examination. Some maps and police papers have been put in and proved by the Crown, and the examinations of the accused before the committing officer have been admitted and used as evidence against them. For the defence no witnesses have been examined, but some police documents relating to the Bala case have been proved in the course of the cross-examination of some witnesses for the prosecution.

I now proceed to deal with the evidence, and it will be convenient to discuss it under the following heads and in the following order:—

(1) The meeting at Basantpur.
(2) Whether the cattle belonged to Government or to the butchers.
(3) The Bala riot case, and the proceedings of the police in connection with it.
(4) What transpired at the thana immediately preceding the riot there.
(5) The riot itself; and
(6) Which, if any, of the accused took part in it.

(1) I think it is sufficiently proved by the evidence of Mahadeo Singh and Raj Raushan Ahir, chaukidars, that a meeting of the Gowrakshini Sabha was held at Basantpur on Saturday, the 26th of August last. Notice of the meeting was given in the bazar by beat of drum on the previous Wednesday. There was a large gathering (700 or 800) of Hindus from Basantpur and other villages, and among them were the three accused Parmeswar, Ramnath and Rajman. Mahadeo also says that the accused Matuki Singh was present, but I am unable to believe this, because in his evidence before the committing officer he did not name Matuki as being present at the meeting. A pandit addressed the meeting, and these two chaukidars profess to tell us what language he used. In his opening address the learned counsel for the Crown stated that the pandit preached the dangerous doctrine of taking forcible possession of cattle from Muhammadans who were going to use them for the purpose of slaughter; but I do not think that the evidence of the chaukidars as regards the language used by the pandit, even supposing that their evidence on this point is trustworthy, establishes this statement. Mahadeo's evidence runs thus:—

"He (the pandit) told the people assembled each to subscribe grain of the weight of a pice for the purpose of feeding cows; also to subscribe money to

liberate cows from the hands of butchers, and also to give money for the purpose of defending persons implicated in cow-rescuing cases, which money was to be given to Parmeswar Singh to keep for the purpose," and I do not think that it can be fairly said that this language is calculated to incite people to commit crimes and disturb the public peace. The evidence of Raj Raushan (who it is noticeable was not examined by the committing officer until the 13th November, *i.e.*, about seven weeks after the committal of the accused) on this point is not so full as that of Mahadeo. He says—"I remember he (the pandit) told the people not to sell cows, and to give grain for their support and also to stop cows (*chenk*)." This phrase to stop cows (*chenk*) is an addition to what is said by Mahadeo, and I am not prepared to believe that Raj Raushan actually heard the pandit use this word; and even if he did it is ambiguous and does not necessarily mean that force or violence was to be used. But whatever view may be taken of the language which the chaukidars profess to have heard the pandit use, it would in my opinion be highly unsafe to rely on the testimony of these two illiterate men as to what was actually said at the meeting. Mahadeo says he gave information of the meeting to the police at Basantpur thana on the day the meeting was held, and that the Munshi Hazir Ali, writer-constable, wrote down what he said. We do not know what that information was. It has not been proved. Hazir Ali in his evidence says that no information was given in his presence by Mahadeo to the Sub-Inspector Khairat Ali, who has not been examined by the Crown to prove what Mahadeo told him on this matter. Moreover, it appears to me highly improbable that language subversive of law and order could have been used at a meeting publicly proclaimed and publicly held in a spot near a police-station, and in the presence of two representatives of the police who were in uniform at the time, and had been specially deputed to attend the meeting.

(2) It is contended by the learned counsel for the defence that the cattle, the possession of which by the butchers for the purposes of slaughter was, according to the case for the Crown, the cause of the riots at Bala and Basantpur, were as a matter of fact the property of the butchers, and that it is a misrepresentation to call them Government cattle. I think this contention is correct; but at the same time this is not in my opinion a material point in the case. It appears to me clear from the evidence of the meat agent, Ehsan Ali, and of the two butchers, Nathuni and his brother Elahi, that Nathuni received in May last at Dinapur an advance of Rs. 900, not from the Government, but either directly from Ehsan Ali himself, or from one Jamadar Mahajan by Ehsan Ali's order for the purpose of purchasing cows for the Commissariat Department at that station. There is no doubt a contradiction between the evidence of Nathuni and of Ehsan Ali as to whether Ehsan Ali himself handed the money to Nathuni, or whether it was paid to Nathuni by the mahajan under instructions from Ehsan Ali. Nathuni swears he received the Rs. 900 direct from Ehsan Ali, while this witness says he caused the money to be advanced by the mahajan (he uses the words *dilwa diya*), and he explains that he did so, because he had not then got the money himself. This contradiction is not to my mind material. That Nathuni did get an advance to purchase the cattle, I think there can be no doubt. This has all along been a part of his story, beginning with his statement made to the police at Basantpur on the evening of the 31st August, a few hours after the alleged Bala riot, and whatever view may be taken of his evidence in regard to other parts of the case, I see no particular reason to disbelieve what he says respecting the advance. It is also proved that Nathuni having got the advance went off with some other butchers to Champaran, where he purchased 131 head of cattle, 127 cows and four bullocks, with the intention of selling them to the Commissariat Department at Dinapur for the purposes of slaughter, and that after the alleged riots at Bala and Basantpur, Elahi, Nathuni's brother, brought 120 of these cattle to Dinapur, and sold 80 of them to the Commissariat Officer there for Rs. 640, and the rest he sold in the bazar for Rs. 160, making in all Rs. 800. This money was paid to the mahajan who had made the advance. It is not clear how Nathuni paid off the balance of Rs. 100, the advance he had received. Clearly therefore the cattle belonged to the butchers, and not to Government, when the alleged riots occurred at Bala and Basantpur; but nevertheless it may be fairly urged by the Crown on the evidence that the persons who took part in those riots believed

that the cattle were going to be disposed of for the purposes of slaughter, and that this was the motive which induced them to take part in them, and this is, I think, the important point in that part of this case which relates to the ownership of the cattle at the time of the alleged riots.

(3) I now come to the alleged riot at Bala, in which, according to the case for the Crown, the three principal accused in this case, Parmeswar Singh, Ramnath Sahu, and Rajman Sahu, took a prominent part. Three witnesses have been examined by the Crown to prove the alleged riot, and that these three accused men were the ringleaders in it. These witnesses are Nathuni butcher and Jhanjhu butcher, who were in charge of the cattle at the time of the riot, and one Rahmat Ali, who describes himself as a carter of the Bala Indigo Factory, and says he was carting indigo for the factory at the time the riot occured near the factory, and that he witnessed it and identified the three accused among the rioters. The account given by Nathuni and Jhanjhu is that on the afternoon of Thursday, the 31st August, they arrived with the 131 head of cattle and some other butchers at Ghograhi Bridge on the public road, which runs south from Salimpur Ghat by Bala Factory to Basantpur, Chapra and Dinapur. At this bridge some 20 or 30 men armed with sticks came up to them, and said they would not allow the cattle to be taken on, and they followed the butchers for about two miles, using abusive and threatening language. Some of these men went off southward in the direction of Laknowra and Narharpur (the accused Ramnath Sahu and Rajman live at Laknowra, and Parmeswar lives at Narharpur), apparently to fetch reinforcements. Nathuni anticipating further interference, then sent one of the butchers, Madaree, with his *parwana* or pass to the Bala Indigo Factory, which was close by, to invoke the assistance of the manager, and while he was waiting for Madaree's return, some 200 or 250 men came up headed by the accused Parmeswar and Ramnath on horseback, who ordered the butchers to be beaten, the cattle to be taken away from them, and the cattle were accordingly driven off by the mob. Nathuni and Jhanjhu were not previously acquainted with Parmeswar and Ramnath; they learnt their names when they were addressed by name by the mob. Nathuni says—"The mob shouted out their names and said here Ramnath, here Parmeswar, addressing them personally, what are the orders. This is the only way I heard their names. The mob said they were acting under Ramnath's and Parmeswar's orders." Jhanjhu adds something to this, for he deposes that, when asked what their orders were, they replied, "beat, assault and take away the cattle." While the cattle were being driven away by the mob, Nathuni and Jhanjhu hurried off to Shekhpura and thence to Basantpur thana, which they reached at 10 o'clock the same evening (31st August). There the information given by Nathuni was at once entered in the station diary by Hazir Ali, writer-constable, in the presence and hearing of his companion Jhanjhu (see exhibit III). Hazir Ali was in charge of the thana at the time, and as he had no authority to record a first information, he the same evening (at 10 P.M.) wrote and despatched a letter (see exhibit IV), giving particulars of Nathuni's information to the Sub-Inspector Khairat Ali, while he himself hastened to the spot The cattle were subsequently found with the other butchers at Khawaspur, a village about two miles from the scene of the riot. The Sub-Inspector, Khairat Ali, arrived at Khawaspur at about 5 P.M. on Friday, the 1st September, recorded the first information (see exhibit V), and commenced his investigation in the case. The witness Rahmat Ali, who, as I have already said, was, according to his own account, carting indigo at the time of the riot, tells us that he identified among the rioters Parmeswar, Ramnath and Rajman, with whom he was previously acquainted. They were the ringleaders. Parmeswar was mounted on a white horse and Ramnath was riding a bay or red horse, while Rajman was on foot. He further tells us that the mob dispersed on the approach of Mr. Bean, the Manager of Bala Factory. I think the evidence of this man is open to the gravest suspicion. He was not examined as a witness for the Crown in the Bala case, which was tried by the Deputy Magistrate of Gopalganj at Basantpur, while at the same time and place the preliminary enquiry in the present case was being held by the Joint-Magistrate of Siwan, and no explanation is given of the omission to call him as a witness in that case. He appears to be a chance witness, who was picked up somehow or other by the police after the alleged riot at Basantpur. He tells

us that his attendance and the quantity of indigo he carted to the factory after the riot were duly entered in the factory attendance register on that day. This register, if produced, might have thrown some light on this matter. He tells us also that Mr. Bean knows the three accused, and that he saw them among the rioters when he came up. Mr. Bean's evidence would therefore have been important on this point, and also as to whether he saw Rahmat Ali at the Factory or at the scene of the riot on that day. It is noticeable that this Rahmat Ali and one Sajjad Hussain have been examined by the Crown to prove another part of the present case, viz., that while returning home from Basantpur bazar on the evening of the 6th September (the date of the riot at Basantpur), they saw 50 or 60 men going along in the direction of the thana, and according to Sajjad both he and Rahmat Ali had an interview with the police at Basantpur thana on the following Sunday, 10th September, when they told the police what they knew. Sajjad further says that Rahmat told him to go with him to the thana and make his statement. The head-constable at the thana was Ali Akbar, a witness in the present case, and they had an interview with him. He called them in. Rahmat Ali on the other hand denies that he ever went to the thana at all, or gave any information or made any statement whatever to the police about the Bala case, or about the Basantpur case. His first statement he says was made to the Joint Magistrate of Siwan, before whom he was summoned to attend. Having regard to all these circumstances, it appears to me that the evidence of Rahmat Ali is wholly unreliable, and that it is of no value whatever as against the three accused.

I now turn again to the evidence of Nathuni and Jhanjhu. That there was a riot near Bala Factory on the 31st August I see no reason to doubt. A large mob of Hindus intercepted the butchers while they were driving their cattle along the high road, evidently with the object of forcibly releasing the animals from their custody, and so preventing them from being used for the purposes of slaughter. And they would probably have effected their object and driven away the cattle had it not been for the timely approach of Mr. Bean. So far, therefore, the evidence of Nathuni and Jhanjhu may be accepted as substantially true; but I am of opinion that their evidence, so far as it implicates the accused Parmeswar, Ramnath and Rajman in the riot, is quite untrustworthy, and it is not very difficult to see that the case against them in its present form began to take shape at a particular stage of the police investigation, that is to say, at Basantpur thana some time on the 6th September. It is impossible to reconcile the present evidence of Nathuni and Jhanjhu with the information given by Nathuni a few hours after the occurrence to the writer-constable at Basantpur thana, or with his first information recorded by Sub-Inspector Khairat Ali at Khawaspur on the afternoon of the following day, the 1st September; and a reference to these two documents (III and V) will show that all that Nathuni then stated was that the rioters said they were acting under the orders of Parmeswar Singh, Ramnath and Rajman Sahu. There is not a word in either of them about Parmeswar and Ramnath being on horseback, or indeed about any one being on horseback, a fact which, if true, could scarcely have escaped the notice of the butchers; there is not a word about the rioters addressing the accused Parmeswar and Ramnath by name, and asking them for orders; there is not a word about the accused giving the rioters any orders. These are not mere embellishments. They are most material additions, without which there would be nothing to show that the accused were present at, or took any part in, the riot. Further, the action, or rather I should say the inaction, of the police against the three accused men between the 1st and the 6th September plainly indicates that during this interval the police had elicited no evidence from the butchers, or any one else, that would have justified them in taking proceedings against them, or of treating them as accused persons. The Sub-Inspector of Basantpur, Khairat Ali, who, although he was examined as a witness by the committing officer, has not been examined as a witness for the Crown in this case; he was merely tendered for cross-examination, took up the Bala case on the 1st September, and continued his investigation up to noon of the 5th, when it was suspended on the arrival at Basantpur of the District Superintendent of Police, Mr. Boileau, and of Inspector Gayatri Prasanno Ghoshal. The latter officer tells us in his evidence that both the District Superintendent and he enquired into the case after their arrival; and he himself carried on his

investigation from noon of 5th September up to 5 P.M. of 6th September, when for the first time Parmeswar, Ramnath, and Rajman were described as accused, and as such were released on bail. What then transpired at the thana after the arrival of Mr. Boileau and Inspector Gayatri to bring this about? The evidence on this point is that of some police officers and of Nathuni butcher, and it requires to be closely and carefully considered. The Inspector tells us in his evidence that, after his arrival with Mr. Boileau at Basantpur, he saw Mr. Boileau on a dog-cart for a few minutes between 11 and 12 o'clock on 5th September, and it was then that Mr. Boileau ordered him to summon certain persons to attend the thana, and be examined as witnesses in the Bala case, and among the persons to be so summoned were Parmeswar, Ramnath and Rajman. The names of several persons were read out to him by the District Superintendent from a paper he held in his hand, a confidential report, and further on (see page 95 of his evidence) he says: "The men named were summoned, because their names were entered in the station diary. At that time I had no reason to believe that the persons summoned had been guilty of any offence." The three men—Parmeswar, Ramnath, and Rajman—were accordingly summoned to attend the thana as witnesses at 4 P.M. on the 5th September. Two of these summonses have been produced by the defence (see exhibits I and II), and it is admitted by Inspector Gayatri that the third summons which was served on Parmeswar is similar in form to the other two. These summonses show that the three accused were summoned to give evidence in the case of The Empress *versus* Unknown. They did not attend on the 5th, but, according to the case for the Crown, they attended the thana at 3 P.M. the next day, the 6th, and, according to the defence, they attended some time in the morning of that day. But however that may be (and I shall refer to this matter later on), it is clearly proved by the evidence of the Inspector and Hazir Ali that the District Superintendent himself held an enquiry into the Bala case for four hours, *i.e.*, from 7 to 11 A.M., on the 6th September, in the road-cess bungalow, which is some 300 yards from the thana building. The Inspector says (see page 96)—"On that morning (6th) I was in the dâk bungalow with the District Superintendent of Police; he arrived there about 7 A.M., and it was then that he made his enquiries. I cannot say whether the persons who were summoned came to the bungalow compound that morning. The District Superintendent took the evidence of the witnesses at the bungalow. I cannot recollect the names of those witnesses. I can give the names of one or two, viz., of Nathuni and perhaps of Tana butcher. I cannot remember the names of the others. The District Superintendent remained in the bungalow up to about 11 A.M. Hazir Ali was there while the District Superintendent was present. He did not, so far as I recollect, come into the District Superintendent's room with a list of witnesses just before the District Superintendent left. I do not recollect whether he brought in any list at all. I cannot swear whether he did or did not bring any such list." The Inspector does not appear to have a good memory for certain matters. Writer-Constable Hazir Ali is more positive. He says in his evidence that there were no persons outside the bungalow who had been summoned to give evidence in the Bala case while the District Superintendent was in the bungalow. Ordinarily he says these persons should have been there then, but they had not come. Nathuni, however, tells us a different story. He says—"He (Mr. Boileau) took down the statements of all the butchers on that day. The Inspector of Police, Gayatri, was then with Mr. Boileau, and some persons were then sitting outside the bungalow at Basantpur who had been summoned to give evidence." The evidence of the Inspector and of Hazir Ali on these points is not, I think, at all satisfactory; and the impression it left on my mind was that they were endeavouring to conceal facts which, if admitted, would support the case for the defence, that Parmeswar, Ramnath and Rajman attended at the thana on the morning of the 6th September, and were among other witnesses waiting outside the bungalow for examination, while Mr. Boileau was holding his investigation. In the ordinary course of things they should have been there in the morning. The summonses were for them to attend at 4 P.M. on the 5th, and in the ordinary course they would have been served on that day, as these men live only 6 or 7 miles from the thana. On all these matters the evidence of Mr. Boileau would have thrown much light. He has not been called by the Crown, because it is said

he was not an eye-witness to the alleged attack on the thana; but that is not the point: what we want to know, and this seems to me of great importance, is what Mr. Boileau did during the four hours he was holding his enquiry at the bungalow. What witnesses were then present, what witnesses were examined by him besides the butchers, and what was the result of his investigation so far as it affected the three accused in the Bala case? Did he see these three men at the bungalow on that morning, and did he examine them or give the Inspector instructions to examine them? On all these matters it seems to me that Mr. Boileau's evidence would have been of the utmost value. Not only has Mr. Boileau not been put into the witness box, but not a single paper connected with the proceedings of the police in the Bala case, up to the 6th September, has been produced. No papers relating to the investigation made either by Sub-Inspector Khairat Ali, by Mr. Boileau, or by the Inspector Gayatri, are forthcoming. On the 1st December, Mr. Garth asked for the production of the police papers in the Bala case (not the diaries), and the District Magistrate was requested to direct the District Superintendent of Police to produce them, but they were never produced. I then, under section 172, Criminal Procedure Code, called for the special diaries in the case, and in reply the special diaries of Inspector Kasim Ali, commencing on 16th September, were sent (see District Superintendent's letter No. 1879, dated the 12th December), diaries which obviously throw no light whatever on the investigation of Khairat Ali, Mr. Boileau and Inspector Gayatri, between the 1st and 6th September. In reply to a further call, the District Superintendent regretted his inability to produce the diaries of preceding dates, on the ground that they had been done away with by Sub-Inspector Khairat Ali (see District Superintendent's letter No. 1883, dated the 13th December). I then asked for copies of the diaries, and in reply I am informed by the District Magistrate that neither the originals nor copies of the diaries in question are forthcoming (see District Magistrate's letter No. 3310, dated the 19th December). No explanation is given of the inability of the District Superintendent to produce the copies asked for. Mr. Boileau left the bungalow at about 11 A.M. on the 6th September, and it is clear that up to that hour nothing has been elicited from the witnesses examined by him which would have justified the police in treating Parmeswar, Ramnath, and Rajman as accused persons in the Bala case. After Mr. Boileau's departure, the investigation was continued by the Inspector Gayatri up to 5 P.M. What then transpired between 11 A.M. and 5 P.M.? There is no evidence to show what proceedings the Inspector took in the case between 11 and 3 o'clock, but at 3 o'clock we are told by several witnesses that the three accused appeared at the thana for the first time on that day. They were then taken into the upper story of the thana building, placed in the verandah there, and mixed up with fifteen or twenty men who were brought in by the police from somewhere outside the thana. The butchers were then sent for, and Nathuni and Tana and another butcher came upstairs one at a time, and each in turn was asked to identify the men they had seen in the Bala riot, and Nathuni there and then identified Parmeswar and Ramnath, and Tana and the other butchers identified all three accused. The witnesses who have given evidence as to the alleged identification are Inspector Gayatri, Head-Constable Ali Akbar, and Nathuni butcher, and I am of opinion that this evidence is open to the gravest suspicion. Tana butcher, one of the alleged identifiers, is not called as a witness, although he was examined for the Crown in the Bala case, and was outside the Court during the present trial. There is not a single independent witness to their alleged identification. Nathuni's evidence on this point is, I think, of no value. It is clear from his evidence respecting other parts of the case that he is a man who was under the influence of the police. He had on the 6th September been four days with the cattle at Basantpur, and it would not, I think, be difficult for the police to get a man of this stamp to say what they wished. It is said that fifteen or twenty men were brought in from outside, and that the three accused were then mixed up with them, but no witness can tell who these men were, and not one of them has been called as a witness. There is no record of their names and residences produced, and there is no record of the identification produced. Admittedly the butchers' statements were taken by the Inspector at the time of the identification, and they also have not been produced. Three accused were summoned to attend as witnesses. We are not

told whether they were examined as such, and if so, what they said; and if not, why they were not examined. The entry in the station diary, under date the 6th September, at 5 P.M. (see exhibit E), does not say a word about the identification, as I think it certainly would have done had there been any *bonâ fide* identification as the Inspector and head-constable depose. All that appears in that entry is that the Inspector, after making enquiry about the circumstances of the case of Nathuni and three butchers, took bail from Parmeswar, Ramnath and Rajman and released them. The important matter of the identification is wholly omitted. That there was no identification at all, or, if there was, the Inspector did not believe in it, is evident from the fact that the Inspector released these three men on light bail of Rs. 100, although the charge against them, if true, was of a serious character. There is further a very significant admission made by the Inspector in his evidence, which indicates that it was at the time of the alleged identification that the Bala case began to develop against the three accused. The Inspector gave evidence in the Bala case, and he admits having stated as follows in that evidence, which he was allowed to read:—

"Tana and Nathuni pointed them out and said that Ramnath and Parmeswar had been on horseback inciting the crowd to rescue the cattle, and that Rajman was one of the crowd." This is the first occasion on which we find Nathuni altering the statement he made a few hours after the Bala riot to the writer-constable. The question may reasonably be asked: did Nathuni and Tana invent this about the men being on horseback, or was it invented for them? I have thought it my duty to discuss at length the proceedings of the police on the 6th September in the Bala case, so far as they affect the three accused, because it appears to me that they are most intimately connected with their proceedings a few hours later in the present case against the same men. It is said that the Bala case is only an incidental matter in this trial, and no doubt that is true in this sense, that these three men are not now being tried in the Bala case, as they have already been tried in that case and convicted by the Deputy Magistrate of Gopalganj, but the two cases are inseparably connected, and to my mind it is quite impossible to shut one's eyes to the proceedings of the police in the Bala case, while considering the proceedings of the same officer's in the present case.

4. It is contended for the Crown that the three accused came to the thana at 3 P.M., were made accused and released on bail at 5 P.M., and that they returned with their three sureties at 5-30 P. M., and made certain statements to the police. On the other hand, the case for the defence is that these men attended at the thana earlier in the day, were released on bail, and never returned to the thana that day at all. I have already said that it appears to me probable that the three accused did arrive at the thana earlier in the day than 3 P.M., and that the evidence of the Inspector and Hazir Ali on this point is not satisfactory. No entry in the station diary is produced to show that these men came to the thana at 3 P.M.; much stress is laid on the statements made by these three accused to the Committing Magistrate, in which they denied having gone to the thana at any time on the 6th. while it is now admitted on their behalf by Mr. Garth that they did attend on that date. But I do not think that much weight should be given to these statements made by the accused, considering the circumtances under which they made them. They were examined by the Joint-Magistrate on the 13th September, that is to say, on the first day of the preliminary enquiry, and probably before they had taken legal advice on this matter, and therefore they may well have thought it best to deny everything, and not to admit anything which hereafter might be used against them. Admittedly, then, they came to the thana on the 6th, and were allowed to leave it on bail, and I think evidence for the Crown sufficiently proves that they came back to the thana with their three sureties about half an hour afterwards. I do not think the police have invented this part of the case, and made a false entry respecting it in the diary (see exhibit F). Then the question arises, why did they come back, and what did they say to the police? The Inspector and some of the other police witnesses tell us what the three accused said to them on their return. The Inspector says they spoke to him as follows:—"The cows will not be allowed to go away, and it will be better to get the price of the cows paid to the butchers and have the cows released to them, as the Sadhus had

not eaten for three days. I (adds the Inspector) then gave them consolation by telling them that next morning the saheb would come, and if they agreed, the butchers might be induced to give up the cattle, and they then became annoyed and said *achha ham log jate hain*, and then they went off." There is an entry (see exhibit F) in the station diary in which substantially the same language is used. Now, supposing the police have told us substantially what the three accused actually said to the Inspector, can it be fairly inferred, from the language they used, that at that time it was their intention to forcibly rescue the cattle from police custody in the event of the butchers refusing to sell them; and is it probable, if they had such an intention, that they would have disclosed it to the police? Admittedly these accused are well-to-do and respectable men, over whose head at the time a serious charge was pending before these very police officers, and under such circumstances is it creditable that they would intimate to these police that they were going to commit what would amount to dacoity, and so run the risk of being implicated in it, should a dacoity or riot be committed? The words *achha ham log jate hain* are said to imply a threat, but standing by themselves they certainly do not imply anything of the kind. It may be, as is alleged by the Crown, that these men took a great interest in the anti-cow-killing agitation, and that in this matter they may have been influenced by religious sentiment; but if that were so, I think men of this class would in all likelihood keep out of the way themselves, and not take a prominent part in riots and dacoities. The language they are said to have used appears to me to be quite consistent with their desire to prevent a row, if possible, and to warn the police what might probably happen if the butchers refused to sell the cows. And I think also the police might reasonably have expected some trouble on the 6th, even without warning from these men. The presence of the cattle in the grove for four days was calculated to cause excitement and irritation among the Hindus of Basantpur and the neighbouring villages. The 6th of September happened to be a market day when people from the surrounding villages were likely to flock into the bazar. There were Sadhus or Hindu ascetics about, probably inflaming the minds of the people by word and deed, who, it is said, had starved themselves for three days, because of the cattle being retained in the custody of the butchers at Basantpur. There were thus many elements of trouble in the air on the 6th September, and I think it may reasonably be inferred that the object of the accused was to let the police know what some of these elements were. After the three accused and their sureties left the thana, the Inspector, I think, did the best thing he could do under the circumstances, by ordering the armed guard and the butchers to bring the cattle from the grove into the thana enclosure, and by 6-30 P.M. the cattle had been brought in.

5. I now come to the alleged dacoity and riot at the thana. Between 6 and 7 P.M. a great uproar was heard, proceeding from the south side of the thana, and by the time, 7 P.M., the Inspector and his subordinates with the armed guard had reached the gateway of the thana, a tumultuous and turbulent mob of Hindus armed with *lathis*, said to number some 3,000 or 4,000, had arrived in front of the north side of the thana opposite the gateway. The Inspector drew up the armed guard across the entrance to the gateway to bar ingress, and he himself went forward and addressed the mob. They would not listen to him. They kept shouting out to the police to give up the cattle. They were dancing about, striking their chests, and dashing their *lathis* together and shouting out "Pawara Baba ki jai," "Mahabir ki jai," and "Kali ki jai." The words *mar* and *lut* and threats to kill the police were freely used, and one of the mob struck Birdha Singh, constable, with a *lathi*. The Inspector, in order to frighten the mob, ordered the armed guard to fire blank cartridges over their heads which they did, but without checking the mob, and at last, in defence of life and property, the Inspector ordered the guard to fire with ball or shot. They accordingly fired at the mob, and the Inspector and the Head Constable at the same time discharged their revolvers at them, and then the mob dispersed. Two men in the mob were seen to fall, but apparently they were carried off the ground by other members of the mob. The above facts are substantially proved by the evidence of several police officers, and I see no reason to suppose that they have invented this part of the case. There is other evidence, independently of the police evidence, which shows that the thana was attacked, and that guns were fired. Four men who were outside

the thana swear that they heard a great uproar in the direction of the thana on the evening of September 6th. At that time they were all sitting together outside the house of one of them, Ram Autar, which is about 30 yards from the thana, and being frightened at what they heard, three of them rose and hid themselves in the Sub-Registrar's house close by, the other man, Khub Narain, hid himself in Ram Autar's house, and while they were in hiding, they heard the shouts of the mob and the firing of guns. I see no reason to distrust this portion of the evidence of these men, and I think it corroborates the testimony of the police as to the occurrence of the dacoity and riot on that evening. It is quite possible that there has been some exaggeration as to the number of rioters, and it also appears improbable that so few men should have been wounded when, as the police say, the mob was fired at point blank at the distance of a few yards. The armed guard which was sent from Chapra for the protection of the cattle consisted of one Head-Constable Nauzadik Ram and ten constables, and it appears from the evidence of Birdha Singh, the only man of the armed guard who has been examined as a witness, that three men of the guard were absent at the time of the riot, so that the guard then consisted of seven constables (not eight as he says) and the head-constable, who had no gun. There were thus seven guns, and the Inspector and the Head-Constable Ali Akbar discharged their revolvers at the mob, and Ali Akbar says he fired four chambers. Each cartridge contained thirteen buckshot, so that, if seven guns and two revolvers were fired at a closely packed mob of 3,000 or 4,000 at close quarters, we should naturally expect that many of them would have been wounded, and some of them shot dead. The evidence, however, shows that only four men (omitting Ajodhya Rai) were wounded, one of whom died subsequently in hospital. It was suggested for the defence that the police have concealed the real truth, and that the mob and the police were in different positions when the guns were fired; but it seems to me that a more probable explanation is that either all the guard did not fire at the mob, or did not fire at all, and also that other men may have been shot who have not been discovered by the police. There is another point which has been unfavourably commented upon by Mr Garth, and that is that the police say that, while the parleying was going on between the Inspector and the mob, two men were standing near the Inspector, and the guard holding hurricane lanterns in their hands. One of these men was Writer-Constable Ali Husain, and the other was one Piroo Dhunia, the cook of Ali Akbar. This story, it is urged, is an invention of the police to account for their having been able on a dark night to identify many of the rioters. I am, however, not prepared to say that the police have invented this incident. It does not appear to me improbable that lanterns should have been brought out and made use of when the police went to the gateway, but whether any of the rioters could have been clearly identified by the light they threw out is a different matter. It was 7 o'clock and darkness had come on, so that most probably there were some lighted lanterns in the thana at the time. Piroo's evidence is no doubt suspicious. It is not easy to believe that a man of his class, on hearing a great uproar at the thana gateway, would have gone out with a lantern from his cook-room to where the police were standing in front of the crowd, merely out of curiosity to see what was going on. Although, then, some portions of the police account of the actual riot are not altogether free from suspicion, still on the whole I think they have given us substantially a true version of it.

6. I now come to the last part of this case, namely, which, if any, of the accused took part in it; and I will first discuss the evidence against the three principal accused, Parmeswar, Ramnath and Rajman. The case for the Crown is that they were the ringleaders; that they marched at the head of the armed mob to attack the thana and liberate the cattle; and that Inspector Gayatri addressed them in particular, and exhorted them as gentlemen and zamindars to disperse; that they refused to listen to him, and ordered the mob to assault the police and release the cattle. The evidence adduced to incriminate them is the evidence of the police, oral and documentary, and of the two butchers Nathuni and Jhanjhu, who were in the thana with their cattle on the night of the riot. The police witnesses are Inspector Gayatri, Head-Constable Ali Akbar, Writer-Constables Hazir Ali and Ali Husain, and Constable Birdha Singh, and the police documents are the first information in the case, and an

entry in the police diary, both of which were written by Ali Akbar under the directions of the Inspector. I may say at once that there is no independent evidence of a reliable character to show that these three accused took part in the riot. It is quite impossible to believe a word of the evidence of the two butchers, Nathuni and Jhanjhu, against these three men. I have already expressed my opinion that they were under the influence of the police in the Bala case, so as to implicate these accused, and their evidence inculpating them in the riot at the thana bears distinct marks of further pressure having been brought to bear on them, which therefore raises very strong suspicion that they were got at somehow or other since they were examined by the committing officer during the preliminary enquiry. A reference to the evidence given by these butchers in that enquiry will show that they did not in it say a single word incriminating these accused in the Bassantpur riot, and that what they now say as to their having seen and identified the accused among the rioters is entirely fresh evidence; and when asked to explain, they make matters worse by stating that they gave such evidence to the Magistrate. The present evidence of Nathuni and Jhanjhu is therefore, in my opinion, quite worthless. There remains then the police evidence, and the police evidence only, against the accused—evidence which, under any circumstances, ought, in a case of this kind, to be received with great care and caution, and especially so in the present case when, as I have already shown, the action of the police against these very accused in the Bala case, only a few hours previous to the attack on the thana, is of a very suspicious character. The assessors who, it seemed to me, gave their close and careful attention to the evidence throughout the trial, are of opinion that that evidence is not of so satisfactory a character as to justify them in finding these three accused guilty; and on a careful consideration of all the evidence and probabilities of the case, I think their verdict ought to be accepted. There are several points in the police evidence against these accused which, in my opinion, are suspicious and unsatisfactory. It is of the utmost importance to know what the police said and did directly after the riot, and great reliance is accordingly placed on two documents which, it is said, were written by the police directly they returned to the thana after pursuing the rioters. These documents are the entry in the station diary (exhibit J) and the first information (exhibit H), and both were written by Ali Akbar under the directions of the Inspector. It also appears from the evidence of the Inspector and the first information (see column 6) that letters giving information of the riot were promptly written and despatched by special messengers to the Joint-Magistrate of Siwan and the District Superintendent of Police. No letter has been produced. The contents might have thrown light on the case against these three men were they named in them. The evidence of the Joint-Magistrate and Mr. Boileau would have been of value on this point. As regards the entry in the diary and the first information, the material question is when were they written, and in this connection it must be remembered that the police were alone in the thana all that night and until early the following morning, when the Joint-Magistrate and the District Superintendent arrived, and therefore it was in their power to write anything they chose. The evidence as to the time when these documents were written is to my mind not at all satisfactory. Both documents purport to have been written at 7 A.M. (see column 1), but Ali Akbar's evidence shows that this is not correct, for he says that the first information was written at a quarter to 8, and that the entry in the diary is an abstract of the information; and if this be true, then the entry in the diary must have been written by him much later, as the first information is a lengthy document, and must have taken some time to frame and record. A comparison, however, of the two documents will show that the entry in the diary is not an abstract of the first information, as most material matters which are mentioned in the first information do not appear in the entry. Not only are Parmeswar, Ramnath and Rajman not named in the entry, but there is no mention of their being the leaders of the mob, or that the Inspector addressed them particularly; on the other hand, all these particulars appear in the first information, and, as I think, it is impossible that matters so important could have been accidently omitted from the abstract. The reasonable inference is that the entry in the diary is not an abstract of the first information, and therefore that it was written before the first information, and in

that case it is obviously much more valuable as a piece of evidence than the first information, which could have been easily written at any time during the night. The language used in the entry means that the police remonstrated with the rioters generally, and not that they addressed any one of them in particular. The words in Hindi are—*Khud man Inspector, mai Sub-Inspector, aur head-constable, aur munsarim, phatak thana par akar adha ghanta luk bulwayian ko pure tour se tashapi dekar kahagaya ke tum log muntashir hoja*, &c. On behalf of the Crown much stress is laid on the words used near the end of the entry, to the effect that among the rioters were the persons who had come that evening into the thana, and asked for the release of the cattle on payment of price. The Hindi words are—"*Balwayan men se go log af sham ko thana men ae the wé maweshi kimtan mangte the;*" and to see who these men were, we have to refer to a previous entry in the diary (exhibit F), purporting to have been made at 5-30 P.M., and we then find that six men came to the thana and asked that the cattle might be released on payment of their price, and that these six men were Parmeswar, Ramnath and Rajman, and three other men (their sureties) Baran Lal, Gajadar Lal and Gulzari Lal. If the above-quoted entry is a true record, how is it that all these six men are not named in the first information? The explanation given by Ali Akbar of the omission to give the names of the accused in the diary is not satisfactory. He says—"Gayatri told me what to write, and I do not know the reason why the names were not given." The impression on my mind is that, when this entry in the diary was written, the police were in doubt as to whom, if any, they had identified among the rioters; and later on, when the first information was written, these doubts had been removed, and accordingly the names of the three accused are given. Had the police been positive on this point, and also as to who the ringleaders were, it is almost inconceivable that the Inspector would have omitted to state in this entry who the ringleaders were and to give their names, when he had just returned red hot from the pursuit of the rioters. The oral evidence too as regards the presence of the accused among the rioters is, I think, not satisfactory. The Inspector tells us that there was parleying with the accused for about half an hour. He made a speech to them, and some conversation ensued between him and them, and he and some of the other police witnesses profess to give us the exact words he and the accused used. This evidence is, I think, suspicious. It is difficult to believe that, while 3,000 or 4,000 men were making a tremendous noise, yelling and shouting at the top of their voice, and dashing their *lathis* together, the exact words used by the Inspector and by the accused could have been heard and remembered by any one of the police witnesses. There are also differences and discrepancies in the evidence on material points. Ali Akbar tells us that after the parleying had gone on between the Inspector and the accused for about half an hour, they ordered the mob to beat and rescue, and then they disappeared from the front rank, and that after this Matku Rai struck Birdha. The Inspector, however, does not tell us that the accused gave any orders to the mob, and he says he lost sight of them *after* and not *before* Birdha was struck. Ali Akbar's version of the Inspector's speech in his evidence before the committing officer does not agree with his present evidence. Something has been added, and it appears he told the Magistrate that the accused and not the Inspector commenced the conversation with them. Again Hazar Ali gives a different account of the conversation. He says—"The three men in front of the mob were saying the Sadhus have not eaten for three days, let the cattle go, if not they will not escape, they will be plundered;" and after the Inspector made his speech to them. He also says that the accused mingled with the mob *after* the first round of blank cartridges was fired. In this man's evidence before the Magistrate on the 14th or 15th September (when he was recalled), there is not a word that the accused were among the rioters. He was again recalled on the 25th September, and then for the first time he tells us that the accused were in the front rank of the rioters, and used threatening language; but even then there is not a word as to the speech made to them by the Inspector, and their answer to him. He now tells us an elaborate story, and gives the actual words used by them as well as by the Inspector. Ali Husain's evidence is also open to unfavourable comments. He tells us in his examination-in-chief that the Inspector addressed the accused first, but when confronted with his deposition before the Magistrate, he recollects

that the crowd (not the accused in particular) first shouted out to the police, and he tells us the exact words they used. Birdha Singh's evidence is also not satisfactory, and as against Parmeswar it is also open to the objection that a few months ago he gave evidence against him in another rioting case which appears to have been investigated by the Basantpur Police, and in which Parmeswar was acquitted. On the whole, I think the police evidence, oral and documentary, as regards Parmeswar, Ramnath and Rajman having taken part in the riot, cannot be safely relied upon. It further appears to me improbable that these men would have joined a mob of rioters and played a very conspicuous part in the riot in the presence of the police to whom they were known. They are well-to-do and respectable men, and however great may be the interest they take in the protection of cows from slaughter, it is difficult to believe that they would run the risk of punishment by giving themselves over to the police, more particularly at a time when there was another serious charge of rioting hanging over their head. I therefore think, as I have already said, that these men must be acquitted. As against Ajodhya Rai there is, I think, no case. The only witness who says he identified this man among the rioters is Ali Akbar, who, however, did not identify him as one of the rioters before the Magistrate. He was arrested in his village on the 17th September, and at that time he had a sore on his cheek below his left eye, which he then said had been caused by the point of a bamboo spout. One Enaet Hajam has been examined to prove that he lanced this sore and extracted therefrom a shot, and that Ajodhya then told him he had been to Basantpur and was shot there. The assessors have, I think, rightly rejected this man's testimony as untrustworthy. It is impossible to believe his account as to how he came to communicate his knowledge to the Inspector and Ali Akbar at Maharajganj police station three days before he gave evidence to the Magistrate. The Assistant Surgeon's evidence that the sore or ulcer on Ajodhya's cheek was probably caused by a gunshot wound is merely an expression of opinion, and he may be mistaken. As regards the accused Jawahir Lal, there is no evidence that he took part in the riot. Four witnesses, however, say that about sunset on 6th September they were sitting outside the witness Ram Autar's lodging, about 30 yards from the thana, with a lamp on a stool in front of them, and that by the light of this lamp they saw a mob of 60 or 70 armed men go by in the direction of the thana, and that they were using language which indicated that there intention was to forcibly release the cattle. Among these men they say they identified the accused Jawahir Lal, and some others whom they name. This alleged identification, under the circumstances stated by these witnesses, is not in my opinion satisfactory. Ram Autar is short-sighted, and he was unable satisfactorily to recognize Jawahir among the other accused in the dock at about 2 o'clock in the day, even when he went close up to them. Besides, it is not at all clear how these four witnesses were discovered by the police. When first examined by the Joint-Magistrate on the 14th September, Ram Autar and Bindeshwari did not name Jawahir. They named him for the first time on the 21st September, when they were recalled and examined, on which date also the other two witnesses Khub Narain and Parmanand were examined for the first time. From what they say, it would appear that their statements were first taken by an European Inspector Mr. Kleyn, and his evidence would therefore have shown whether this is true. Mr. Kleyn was in attendance for some days in Court during this trial as a witness for the defence, and he might easily have been examined on this point by the Crown.

I think therefore that the assessors have rightly acquitted Jawahir Lal. The assessors would, however, convict Matuki Rai and Khedu Koiri, and here again I think they are right. The case against them is different from the case against Parmeswar, Ramnath, and Rajman, and it is not open to the same suspicion as is attached to the whole of the police evidence against these men. They were not accused in the Bala case. Matuki has been identified by all the police witnesses except Ali Hussain, and Khedu by all except Birdha Singh. If this evidence of identification stood alone, I should feel hesitation in accepting it as conclusive, as it is quite possible that the police may have been mistaken as regards these two men, considering all the circumstances under which they are said to have been identified, and also that they were not previously known to the witnesses. But there is, I think, strong corroborative

evidence; not only were the men shot, but they admit having been present near the thana at the time of riot, although as spectators only. The medical evidence proves that these men were shot. Khedu had more gun-shot wounds on him than Matuki. Khedu's statement is that he was standing near the bricks and the gate of the thana when he was hit (*inte ke nazdik thana ke phatak ke thore dur par the*). Matuki says he was going home from the bazar, saw a mob of men opposite the thana, and he halted to look on, and was then shot. Considering these admissions and the fact that they were shot along with the evidence of the police, I think it is sufficiently established that they were among the rioters and took part in the dacoity and riot. I find it impossible to believe that they were merely idle spectators. Directly the firing commenced, and the police fired first of all two rounds of blank cartridges, I think it probable that any outside persons who may have been in the vicinity would have hurried away. This is just what the witnesses Ram Autar, Bindeshri, Khub Narain and Parmanand did when the firing commenced.

For the reasons given in this judgment, I acquit Parmeswar Singh, Ram Nath Sahu, Rajman Sahu, Ajodhya Rai and Jawahir Lal of all the charges under sections 395, 402, 147, $\frac{152}{149}$ and 151, Penal Code, and direct that they be set at liberty. I also acquit Matuki Rai and Khedu Koiri of the charges under sections $\frac{152}{149}$ and 151, Penal Code, and I convict them of the charges under sections 395, 402 and 147, Penal Code, and sentence them each to two years' rigorous imprisonment. In passing sentence I take into consideration the fact that they suffered punishment at the hands of the police at the time of the riot, and that they have been nearly four months in jail pending their trial. I may also say that I am not satisfied that they took a principal part in the riot.

H. W. GORDON,

Sessions Judge of Saran.

The 28*th December* 1893.

BENGAL SECRETARIAT LIBRARY

APPENDIX.

JUDGMENT OF THE SESSIONS JUDGE OF SARAN IN THE BALA RIOT CASE.

COURT OF SESSION, APPELLATE JURISDICTION.

The 28th December 1893.

CRIMINAL APPEAL No. 224 OF 1893.

APPEAL from the order of Mr. W. H. Thomson, Deputy Magistrate of Gopalganj, dated 9th October 1893.

1. Parmesar Sing, ...
2. Ram Nath Sahu, ...
3. Rajman Sahu, ... } *Appellants.*
4. Gulli Ahir, and ...
5. Khobhari Ahir ...

For appellants ... Mr. W. Garth, Barrister-at-law.
For the Crown ... M. Abdus Samad, Government Pleader.

Judgment.

This is an appeal against the judgment of the Deputy Magistrate of Gopalganj convicting the five appellants of the offence of rioting under setion 147, Penal Code, and sentencing them each to two years' rigorous imprisonment, and also binding them down to keep the peace for two years. The case for the crown is substantially as follows. Nathuni, the complainant in this case, and several other butchers were escorting a convoy of 131 head of cattle (127 cows and 4 bullocks) from the district of Champaran to Dinapur. The cattle were required for the Government Commissariat Department at that station. The *route* the butchers were taking was *viâ* Salempur ghat, where they crossed the river into the district of Saran along the high road running south past Harda bungalow, Ghograhi bridge, and Basantpur police-station to Chapra, and thence on to Dinapur. They crossed Salempur ghat into this district on Wednesday, the 30th August, and that night 8 of the butchers left, and the remaining 10 butchers resumed their journey with the cattle on the following morning, Thursday, the 31st August. On reaching Ghograhi bridge on the afternoon of that date, some 25 or 30 Hindus, armed with sticks, came up to the butchers in two batches from the north, and asked them to give up the cattle, and on their refusing to do so, they followed the butchers, using threatening and abusive language. Bala Indigo Factory was then in sight (see sketch map of the *route*) and so Nathuni sent Madaru butcher with his *parwana* or pass to the factory to invoke the assistance of the Manager, and with the other butchers he hurried on with the cattle. On coming abreast of Bala factory, a large crowd of Hindus came up from the south side and intercepted the convoy, surrounded the cattle, and began to drive them off. Nathuni in a fright broke through the mob, and with Hussain Bux and Jhanjhu butchers, hurried off southward, first to Shekhpura and thence to Basantpur thana, where he arrived at 10 o'clock the same night and gave his information to the Writer-Constable, Hazir Ali. That officer, who was then in charge of the thana, in the absence of the Sub-Inspector Khairat Ali and the Head-Constable, Ali Akbar, recorded the information in the station diary, sent a letter with particulars of the information to the Sub-Inspector, and then started for the spot where he arrived on the following morning. Nathuni accompanied him. There or on the way they heard that the mob of Hindus had dispersed on the arrival of Mr. Bean, the Manager of Bala factory, that the other butchers had collected the cattle and driven them to Khawaspur, where they found the cattle, all of which, with the exception of one, were eventually recovered, and of these one was afterwards sold, thus leaving 129 head in all. On Friday afternoon (September 1st) the Sub-Inspector arrived at Khawaspur and took over charge of the case. He recorded Nathuni's information as the first information in the case, and commenced his investigation. On Saturday morning the cattle were driven to Basantpur thana, where they were picketed in a grove near the inspection bungalow and not far from the thana building. It is said that all the appellants took part in the riot, that the ringleaders were Parmesar Sing, Ramnath Sahu; and Rajman Sahu; that they came with the mob from the south; that Parmesar and Ramnath were conspicuous because they were on horseback (the colour of the horses is given), and that all three men were addressed by name by the mob and asked to give orders. The appellants, Gulli Ahir and Khobhari Ahir, it is said, came with the mob from the north, and both took a prominent part in the alleged riot. Gulli went southward to fetch reinforcements: he and Khobhari were both addressed by name by the mob, and they attacked the witness, Masafir butcher, and threw him into a ditch by the roadside. Gulli also carried a white umbrella under his arm.

I have carefully read and considered all the evidence in this case, and I think that there can be no doubt that there was a riot near Bala Factory on the 31st August last, in which a mob of Hindus attacked the butchers, attempted to drive off the cattle in their charge, and would in all probability have succeeded in doing so had it not been for the timely arrival on the spot of Mr. Bean of Bala Factory; but the evidence which has been adduced to prove

that the appellants took part in that riot is, in my opinion, wholly unreliable. The case, so far as it implicates the appellants, which is now put forward by the butchers and other witnesses, is materially different from and is absolutely irreconcilable with the information given by Nathuni on the evening of the 31st August to the Writer-Constable, Hazir Ali, and to the Sub-Inspector, Khairat Ali, on the afternoon of the following day, and it is easy to see how the evidence against these five men has been developed at different stages of the police investigation. All that appears in Nathuni's first information is that the mob said they were acting under the orders of Parmesar, Ramnath, and Rajman. There is not a word in it as to their, or as to Gulli and Khobhari being addressed by name by the mob; there is not a word in it that Parmesar and Ramnath were on horseback, or indeed that any one of the mob was on horse back, a circumstance which could not possibly have escaped notice had it been true. The case was investigated by Sub-Inspector Khairat Ali. He commenced his investigation on the afternoon of 1st September. He examined Nathuni and presumably the other butchers who have given evidence in this case. What these butchers then said we do not know, because Khairat Ali has for some reason or other not been examined as a witness for the Crown, as I think he certainly should have been. His diaries, too, would have thrown light on his proceedings between the 1st and the 5th September, and I think the Deputy Magistrate ought to have called for and examined them as well as all the police papers of the 6th September, having regard to the very suspicious character of the evidence which is now produced by the Crown. I wished myself to inspect these diaries both in the Basantpur case and in this, and I accordingly sent for them under the provisions of section 172, Criminal Procedure Code, but they have not been produced. The District Superintendent, (*vide* his letter No. 1883, dated 13th December 1893) expresses his regret that he is unable to produce them, because they have been made away with by Khairat Ali since the trial of this case. I have also asked for copies of the diaries, but they too have not been produced. It is said that they are not forthcoming. As I have already said these diaries, coupled with Khairat Ali's evidence, would have thrown much light on his investigation between the 1st and 5th September, and have shown what evidence, if any, he had elicited during this interval incriminatory of all or of any one of the present appellants. That, however, there was no reliable evidence against any one of these men during this interval may be fairly presumed from the fact that no proceedings of any kind were taken against them by the Police until September 6th. It was on that date that the case began to develop against Parmesar, Ramnath and Rajman. The Police Inspector of Chapra, Babu Gayatri Prasanno Ghosal, arrived at Basantpur on the 5th September, and as he says in his evidence he supervised the investigation then being carried on by Khairat Ali. He further says that as Nathuni and one of the witnesses had mentioned Parmesar, Ramnath and Rajman, he on the 5th September summoned them to attend the thana, and they attended accordingly on the 6th. It is noticeable that they were summoned to attend as witnesses and not as accused, so that it is clear that up to this date the police had no evidence which would justify them in treating these men as accused persons. On their attending on the 6th, there took place what is described as an identification of these three men by the butchers, and here for the first time we find Nathuni and Tana butchers stating that Ramnath and Parmesar were on horseback. The Inspector in his evidence as to the identification says: "Tana and Nathuni pointed them (all three men) out, and said that Ramnath and Parmesar had been on horseback inciting the crowd to rescue the cattle, and that Rajman was one of the crowd." On that date (September 6th) these three men, after the alleged identification, were for the first time described as accused (see the three bail bonds taken from them under date the 6th September). The evidence of the butchers and of the police in this case as to the identification of these men at Basantpur on the 6th, is, in my opinion, open to grave suspicion, and I am unable to believe that there was any *bonâ fide* identification by any one of the butchers on that date.

There is not the evidence of a single independent witness who was present at the identification There are also material discrepancies in the evidence on this point. Nathuni says he identified before the Inspector Parmesar and Ramnath, while the Inspector says he identified Rajman also. Mosafir butcher says he picked out Parmesar from among eight others, whereas the Inspector does not mention him as one of the identifiers. Khakhan *alias* Tana butcher says he was asked to pick out Parmesar and Ramnath from among four men seated on the *kotha* (upper story of the thana), and he did so, and adds: "of the other two men; one must have been some thana servant, and the other is Rajman, accused. I did not identify Rajman." The Inspector, however, says that he mixed the three men with 10 or 12 others. Identification under such circumstances appears to me to be quite valueless. It must be remembered that the butchers were in the grove with their cattle on the 6th September, when Parmesar, Ramnath and Rajman attended there, and so they might easily have seen them before the alleged identification before the Inspector, and also that the Inspector himself at that time could hardly have believed this identification to be satisfactory, as he released these three men on bail of Rs. 100 each to attend on the following day, although the charge, if true, was of a serious character. Some other witnesses besides the butchers have also deposed to their having identified Parmesar, Ramnath, and Rajman among the mob, but I cannot place the slightest reliance on what they say. The Deputy Magistrate has himself disbelieved their evidence against three of the accused, Faujdar, Dharichhan, and Gokhul. These witnesses are all Muhammadans, and appear to have come forward for the first time on the 17th September, when they were adjured by Inspector Kassim Ali, who had taken charge of the case from Khairat Ali on the previous day, to disclose all they knew. It is impossible to believe evidence elicited under such circumstances and after such a lapse of time, and further it is noticeable that this evidence bears a very suspicious agreement with the evidence now given by the butchers, and which I have already

said is absolutely irreconcilable with Nathuni's first information. So much for the case against Parmesar, Ramnath and Rajman On such untrustworthy evidence as has been adduced, I think they should have been acquitted.

The case against the other appellants, Gulli and Khobhari appears to have taken shape at a later stage of the police investigation, that is to say, after it had been taken up by Inspector Kasim Ali on the 16th September. Up to that date there is nothing to show that the police had elicited any evidence against them. On that date, however, Kassim Ali tells us, Mosafir butcher and his son, Tana butcher, both of whom it must be remembered were examined for the first time by the Sub-Inspector, Khairat Ali, on the 1st September, stated to him that they had heard the names of Gulli and Khobari used by the mob at Bala, and that Khobhari had thrown Mosafir down, and it was on this information that Gulli and Khobhari were arrested on the 19th of September, when Mosafir, Tana, and other butchers identified them as having been among the mob. The Deputy Magistrate does not believe that the name of Gulli was ascertained in this way, but thinks that the butchers learnt his name somehow or other subsequently, but, he adds, "they were too-thick headed to disclose how." This appears to me to be a singular mode of reasoning. Judging from the evidence of these butchers, thick-headedness does not appear to be one of their failings. In my opinion the evidence of the four butchers implicating Gulli and Khobari is tainted and wholly untrustworthy. Tana butcher explains how he came to learn the name of Khobhari by a most absurd story which the Deputy Magistrate accepts as true. His story runs thus: "As regards Khobhari, while hunting for the missing cows (this was on the 1st September), I met him drawing water. I asked him his name, and he said, Khobhari. I said, very well, you are the fellow who tumbled my father into the ditch. I have found you out." Such evidence as this needs no comments. For the reasons I have given in this judgment, I set aside the conviction and sentences, and direct that all the appellants be acquitted, and that the order binding them down to keep the peace be set aside.

There is another matter in this case which merits notice, and that is that the witnesses for the Crown were not cross-examined on behalf of the accused either before or after the charge was framed. The case was taken up by the Deputy Magistrate on the 22nd September, (the day after it was made over to him) and evidence was recorded on that date and on the 23rd and 24th September, when the charge was framed and the witnesses were discharged, and the 4th October was fixed for the defence. On the 3rd October, the three accused men, Parmesar Singh, Ram, Nath Sahu and Rajman, presented an application to the Deputy Magistrate praying, under section 257, Criminal Procedure Code, for reasons stated therein, that witnesses for the Crown might be summoned for the purpose of cross-examination. The Deputy Magistrate, however, refused this application on the ground "that the defence is seeking to cause vexation and delay and thus harass the prosecution and defeat the ends of justice;" and adds the Magistrate: "I would be wanting in my duty if I granted this petition." The reasons given by the Deputy Magistrate for thinking that the application was made for the purpose of vexation or delay and for defeating the ends of justice are not in my judgment satisfactory, and, I think, under the peculiar circumstances of the case, he ought in all fairness to the accused, to have granted their application. The case was taken up by the Deputy Magistrate in haste, while the other case of the riot at Basantpur was going on against these same three accused before another Magistrate. The accused were in jail, and both cases were being heard at Basantpur some distance from head-quarters. Under these circumstances is it surprising that the accused could not obtain proper legal advice and assistance in both cases on such short notice? At the conclusion of the order rejecting the application, the Deputy Magistrate writes thus: "The witnesses were very carefully questioned by this Court, and particularly in every point which was likely to favour the defendants. The case entirely depends on how the several accused came to be traced and identified, and the witnesses have been so fully questioned in regard to that, that there seems to me to be no room for cross-examination." Now while fully crediting the Deputy Magistrate with a desire to do justice in this case, it appears to me that he has unfortunately omitted to put questions to Nathuni and the other butchers, which were of a most material character and of the greatest importance for a just decision of the case. Nathuni in particular ought to have been asked how he reconciled the evidence he was then giving against the accused with the information he gave to the Writer-Constable on the 31st August, and to the Sub-Inspector on the 1st September. The Deputy Magistrate would, I think, have done well had he made use of the power vested in him by section 540, Criminal Procedure Code, and summoned and examined the Sub-Inspector, Khairat Ali. To my mind he was a most important witness, and his evidence was essential to the just decision of the case. He was the investigating officer from the 1st to the 15th September, and he could have deposed as to what the other butchers stated during the early days of his investigation. He could also have produced the recorded statements of these witnesses, as well as his special diaries of the case for the Deputy Magistrate's inspection. The omission of the Crown to examine him raises a presumption that his evidence, if given, would have been unfavourable to the Crown. Under all these circumstances, I think, as I have already said, that the Deputy Magistrate would have done well had he summoned and examined this officer.

This case is altogether a most unsatisfactory one, and I think that the refusal to summon the witnesses for cross-examination seriously prejudiced the accused.

W. H. GORDON,

The 28th December 1893. *Sessions Judge.*

W. S. and others—Reg. No. 6115C—100—23-1-94.